UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	. Case No. 01-01139
	.
W. R. GRACE & CO., et al,	.
	. 5414 USX Tower Building
Debtors,	. Pittsburgh, PA 15222
	. December 20, 2004
. . . . .	. 12:09 p.m.

TRANSCRIPT OF OMNIBUS HEARING
BEFORE HONORABLE JUDITH K. FITZGERALD
UNITED STATES BANKRUPTCY COURT JUDGE

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THE COURT: This is the matter of W. R. Grace, bankruptcy number 01-1139.

MS. BAER: Good morning, Your Honor. Janet Baer on behalf of W. R. Grace.

THE COURT: Good morning. Go ahead, Ms. Baer.

MS. BAER: Your Honor, agenda item number one is the application of Deloitte Touche LLP to provide tax services to the debtor. A certificate of no objection was filed, your Honor, and we'd ask for entry of that order.

THE COURT: I instructed my staff to enter those orders last week, Ms. Baer. I apologize. I haven't had a chance to check the docket so I'm not sure whether they have actually been entered or not.

MS. BAER: We have not seen them on the docket, Your Honor.

THE COURT: Okay. It should be entered.

MS. BAER: Thank you. Your Honor, item number two, the application of David Austern to appoint Tillinghast as actuarial consultant, a certificate of no objection was also filed on that.

THE COURT: Same ruling.

MS. BAER: Your Honor, item number three is the application of the Official Committee of Equity Security Holders for an order appointing Lexecon as its asbestos claims consultant. Your Honor, the debtor does not object to this

application but there are other objections, and I'll turn the podium over to the futures -- or, the Official Committee's representative.

THE COURT: Good morning.

MR. BENTLEY: Good morning, Your Honor. Philip Bentley of Kramer Levin for the Equity Committee. I'm hear, Your Honor, on the application to retain Lexecon LLC as our asbestos claims consultant. As the Court may be aware, Lexecon is a distinguished consulting firm that has extensive experience in doing sophisticated economic and statistical analysis in a variety of fields, including the field of asbestos claims estimation.

As Ms. Baer mentioned, the debtor does not object. Indeed, we understand the debtor supports this application. We understand the U.S. Trustee also does not object. Two objections, though, have been filed to the application by the PI Committee and the PD Committee, and I'd like to address those, Your Honor.

The basis for the objection that's been stated, Your Honor, is that the debtor has filed a plan that preserves most of the value for the equity. And indeed, Your Honor, as you'll hear from Ms. Baer later today, that is a plan that we very much support, and we expect to be co-proponents of that plan, as we understand the Commercial Committee expects as well. The fact, though, Your Honor, that we support the debtor's plan we

submit is no reason whatsoever that we should not have the right to be adequately advised by an expert asbestos claims consultant, no more than it would be a reason to deprive the Commercial Committee of the right to have such an expert, and Your Honor may be aware they have had such an expert throughout the case, as well as a financial advisor. If anything, Your Honor, if there is a fulcrum security in this case, a security whose recovery is most in dispute, it would be us, the equity. The Court may be aware that the market is giving very substantial value to the equity, and the debtor's plan gives very substantial value to the equity. But the asbestos plaintiffs' lawyers of course dispute that and think the equity should be entitled to nothing.

We have a security that this case is going to be about, Your Honor, and that, as Your Honor very well aware is, is different from the usual case in an asbestos bankruptcy. It's not uncommon for the equity to get nothing. But in this case we are the -- we are the security that the fight is all about.

Now, are the debtor's interests aligned with our in many respects? No doubt, Your Honor. They at present are fighting the same fight that we would like to fight and the same type that the Commercial Committee will be joining them on. But that doesn't mean, your Honor, that the debtor doesn't have the duties to other constituencies. The reason the U.S.

Trustee appointed us an Official Committee in this case is precisely because the debtor is required to balance its duties to the equity with its duties to creditors, its duties to employees, and perhaps other constituencies as well.

We've been very focused throughout this case, Your Honor, in minimizing expense, and we will continue to minimize expense, but we think that now that the activity in the case has gotten much more substantial than it had been, and now that Your Honor has made very clear that this case will be moving forward toward confirmation of a plan, either the debtor's plan, as we hope, or some other plan, it's critical that we have an expert asbestos estimation expert to advise us in a number of different contexts, Your Honor.

In the first place, Your Honor may recall we were -- we were here before Your Honor in late October, after the debtor had had intensive and last-minute negotiations with the plaintiffs that almost resulted in an agreement between the debtor and the plaintiffs on a plan of reorganization. Your Honor will recall I was here and advised you -- and advised the Court that we had not been invited to participate in those negotiations, and I said then and repeat now, we don't fault the debtor for not having brought us into the negotiations because nobody expected that at the last minute the plaintiffs were going to come forward and have very serious talks that might lead to a plan. But, as I said back in late October, we

very much want to be part of the negotiations going forward, and I believe Your Honor indicated that you think that's appropriate, and we intend to be part of the negotiations.

Now, in order to meaningfully participate in negotiations, your Honor, we obviously need to get fully up to speed on the issues, and that's why we retained Lexecon, because we need that expertise, so that we can understand the issues and understand -- and be able to make our own determination whether we agree with the debtor's judgment as to whether a plan that's been proposed is acceptable or not. Your Honor will recall we almost came to a spot two months ago where the debtor might have supported a plant that we were not nearly as comfortable with. If that were to happen, Your Honor, then we have another context where we would critically need our own estimation adviser, and that would be if the debtor and the plaintiffs were to reach a settlement that we didn't support. Then we would need to set forward and engage in vary substantial litigation, and we'd need to be prepared to do that.

So for all of those reasons, Your Honor, we submit there shouldn't be a serious dispute as to our entitlement to retain an asbestos estimation advisor. We submit that Lexecon is a very appropriate party to assist us in that regard, and one that we believe could be very helpful to the Court down the road if this matter ultimately gets litigated before Your

Honor. If Your Honor has no questions, that's all I have.

THE COURT: All right. Thank you. Mr. Lockwood?

MR. LOCKWOOD: Good morning, Your Honor. The issue here we submit is mostly a matter of timing and in connection with contingencies. This motion was originally brought on by the Equity Committee on the urgent need for them to review some purported proposed settlement between the asbestos and the debtor that was going to resolve matters in a way that might be adverse to equity. Putting aside whether or not they "almost" succeeded, for the moment, the fact is that they didn't and that what we've now got on the table is a plan by which the debtors intend, as you will hear in more detail later this morning, to cram down a plan on the asbestos interests, property damage, personal injury, future, without even giving them a vote. And this is part of the debtor's, to quote counsel's performance of their duty to other creditors.

Frankly, I think it's pretty clear here that the debtors have consistently regarded their duties in this case as extending to -- only to their equity holders. They've consistently taken the position that this bankruptcy case is a vehicle not for a consensual plan but to litigate their way out of their asbestos liabilities, PI and PD. They're plan that they've now drafted and the associated motions that go with it are instrumental in attempting to accomplish just exactly that sort of litigated end. And the idea that equity is somehow or

another is desperately needing to preserve its own interests by piling yet another set of experts on the table is, shall I say, at least premature.

Having said that, I have to acknowledge that one of the things that the debtors have put on the table is a proposed estimation. And depending on how the Court ultimately -- or, Courts, because I guess Judge Buckwalter is going to be involved in this in some way, decide to proceed forward on that estimation, and depending on how this Court envisages the debtor sort of taking the lead, there may or may not be a role for equity to have an expert who presumably is going to be doing exactly the same thing as the debtor's expert, which is attempting to estimate the asbestos viabilities, property damage and personal injury, at the lowest possible number. So essentially what you're going to have is doubling up of experts that -- for that purpose. The idea that somehow or another the Equity Committee needs some expert to come in here and kind of do something that the debtor's not planning on doing, i.e., coming in with a low-ball asbestos numbers, is a bit incredible.

But again, I guess my view on all of this is that at the bottom line this motion is probably premature and it ought to -- the Court's decision on this ought to abide the determination of where we're going with estimation and what role the Equity Committee is going to have as a litigant, if

you will, in that procedure vis a vis what role the debtor is going to have in that. So that's our view on the subject, Your Honor. Thank you.

THE COURT: All right. Mr. Baena?

MR. BAENA: I'd only be duplicating the argument, Your Honor.

THE COURT: Well, I am a little confused, since there is no settlement on the table and we're not close I think yet to determining where and how the estimation process is actually going to take place, as to why the Equity Committee needs an expert now. I'm not sure that the interests of equity and the debtor or not aligned in this issue of the estimation. It may turn out they're not, and what I'm not clear about is is that what you're trying to determine, meaning do you have had access to the debtor's information, is there something about it that you challenge?

MR. BENTLEY: Does this microphone work, Your Honor?

THE COURT: Yes.

MR. BENTLEY: Yes. Okay. Your Honor, the reason what crystallized in our minds the need for an expert now was what happened in late October, and that was with no expectation on anybody's part, I think that it -- that this would happen the debtors apparently came extremely close to a settlement with the tort claimants.

THE COURT: Well, if that's the case, why are we

here, why are we not back before a mediator and why aren't you banging each other's heads together until one is actually negotiated? That would be a whole lot more productive.

MR. BENTLEY: Well, from our standpoint, Your Honor, we -- as I said in late October, we were concerned about the substance of the settlement. The debtor did share with us exactly where they were with the plaintiffs. We were very concerned, and we concluded that it was critical that we get fully up to speed, and therefore we did go out, we retained Lexecon. They have -- Lexecon has had access to the debtor's claims database. They have been analyzing that, and the objective, Your Honor, is that we can fully understand all the issues, that we can appreciate the reasons the debtors would have to settle, and make our own evaluation, because as the Court knows, our conclusion could be different than the debtor's, legitimately so. And there simply would not have been enough time had the debtors wanted to wrap up that negotiation back in October for us to run out and do the analysis.

It's not an analysis that can be done in two weeks, Your Honor. We've been working on it now. We've made a lot hf headway, and the debtor has been very helpful in helping us get up to speed. But we simply could not -- the equity would have to be part for a settlement to be meaningful and to enable the Court to get this case out of bankruptcy. The settlement would

have to include the equity. But for that to happen we need to be up to speed in advance, Your Honor.

THE COURT: Okay. Well, so you want to -- you're really looking at this as an estimation issue, not as a voting on the plan issue? Because I'm frankly a little bit confused about the debtor's structure for this plan that's going to cram down information against unsecured creditors but still devolve something to equity. I'm a little confused as to how that all is going to work. But so you're not looking at this as confirmation, you're looking at this as estimation for the --

MR. BENTLEY: We're looking at it from a variety of standpoints, Your Honor. As I said, one critical standpoint is settlement, that is, there could be settlement talks at any time. Beyond that, though, estimation is a critical part of this, Your Honor. We don't expect that -- as Your Honor knows, there's not a vote in support of -- there's not a vote on the plan by the plaintiffs, so this will have to be resolved by the Court looking at the claims and making a ruling on the merits.

THE COURT: Wait, say that again? There is not a vote?

MR. BENTLEY: The debtor's plan does not provide for a vote by the plaintiffs, as Your Honor --

THE COURT: I understand that.

MR. BENTLEY: -- as Your Honor indicated, and therefore we do expect Your Honor will have to look at the

merits of the claims, and we would think that if we were to go in the litigation direction rather than the settlement direction we think it's critical that in either scenario we be prepared and we have a chance to participate meaningfully. Mr. Lockwood said, well, gee, the equity would simply be saying the same thing as the debtor. Well, we'd be saying the same thing in once sense, but it's the same respect in which the Credit Committee would be saying the same thing.

THE COURT: Well, you may have a different -- your expert may have a different valuation possibly. I mean, experts tend to have different numbers because they think that's what they're paid to do, even if they might like somebody else's number it'll be a little different or the analysis will be, because otherwise why hire them? So to that extent I don't know whether there's duplication or not. To the extent that they're actually taking a fresh look at this on behalf of an Equity Committee, you know, their marching orders will be somewhat different probably from the debtor's, and likely is that they would come up with a different set of numbers. But whether or not it's a meaningfully different set of numbers so that you can't support a settlement is a different issue. Hopefully these experts are getting you towards settlement, not away from settlement.

MR. BENTLEY: We're hopeful of that, Your Honor.

THE COURT: All right. Does Lexecon have a budget?

MR. BENTLEY: We have not asked them to provide a budget yet. We can, Your Honor.

THE COURT: I'd like a budget.

MR. BENTLEY: Okay. We'll come up with --

THE COURT: Because I think part of this and whether or not it's premature is going to be driven by how much this is going to cost the estate, and I just don't know at this point, since we're pretty far from estimation, and I'm not aware of settlement talks. Am I the last to know?

MS. BAER: Your Honor, with respect to the Asbestos Committees there has been no substantial progress since last we were here. With respect to equity and the unsecured, we do have in fact a joint Chapter 11 plan we're about to prepare and file.

MR. LOCKWOOD: Those sort of settlement talks, Your Honor, can best be characterized by the old phrase about kissing your sister.

THE COURT: Well, the issue, though, is if you're actually going to have a settlement with the Equity Committee do you need a separate estimation issue? I mean, if you're going to be co-proponents aren't you going to use the same experts?

MS. BAER: Your Honor, for example, we actually had meetings last week with equity and with the unsecureds to go through with them what we believe are the appropriate ways to

approach estimation, what we believe the claims are and the like with the idea that they become educated with us and they needed their own experts to review our information to see whether or not they were on the same page. So already they have actually had their experts involved and needed that help.

THE COURT: Is this new plan going to have a 524(g) injunction in it?

MS. BAER: Yes, Your Honor. The only change is in the plan, the joint plan that we would anticipate filing very shortly, is some changes in details vis a vis interest rates and the like. It is still base -- the same basic structure of the plan that was filed in November.

THE COURT: When is the disclosure statement coming up?

MS. BAER: Your Honor, the disclosure statement hearing is set for January 21st, but as part of the protocol we filed last week we're actually asking for that to be continued for 60 days so we can concentrate on estimation and case management, and also are going to be asking to add to the estimation a potential ZAI bar date. That's what we'd like to take up at the end of January.

THE COURT: Okay. Well, just on the issue of the disclosure statement for my education for a moment, how is the debtor going to cram down a plan, get a 524(g) injunction and still meet the 75 percent voting requirement?

MS. BAER: Well, Your Honor, we don't believe that if the asbestos creditors are unimpaired they need to vote. We will in effect have an unimpaired class who would be entitled to -- and we would be entitled to the 524(g) injunction. Your Honor, it all comes back to, and the key is, estimation and estimating the claims of what we believe is appropriate. And if it's estimated the way we believe it's appropriate we can then in fact pay them in full and they are unimpaired.

THE COURT: Well --

MR. LOCKWOOD: Your Honor, we're going to be addressing this issue when we get to the protocol. I mean, for present purposes suffice it to say that the asbestos PI and I believe PD view the debtor's plan as, A, ludicrous, and B, dead on arrival for the reasons that Your Honor just stated. But probably we ought to get to the protocol issue and deal with that rather than --

THE COURT: Yes --

MR. LOCKWOOD: -- do it in connection with Lexecon.

THE COURT: I agree with that. I just simply wanted to know for my own purposes how that was going to happen, but I see what it is. It's 75 percent of those voting in favor of the plan, that's what the debtor is talking about. All right.

MR. LOCKWOOD: No, that's not what the debtor's talking about because there's zero voting in favor of the plan.

THE COURT: Well, you don't need to vote if you're

unimpaired.

MR. LOCKWOOD: Under --

THE COURT: That's what the --

MR. LOCKWOOD: You're right.

THE COURT: -- that's what the debtor is looking at.

MR. LOCKWOOD: That's -- they're looking at 1126 --

THE COURT: Yes.

MR. LOCKWOOD: -- not 524.

THE COURT: Okay. Anyway, back to this. It seems to me that to the extent that what the Equity Committee does is wants an opportunity to make sure that its support of the plan is appropriate for its own constituency. This is probably appropriate, but it has to be within reasonable limits, because I am not seeing how the debtor and the Equity Committee's interests are at such a variance that the Equity Committee needs its own expert for this estimation purpose. I may be convinced otherwise if your expert comes in and says the debtor's experts did this, this, this and this wrong and therefore we need to redo the information, but if they're basically going to say, yes, the analysis is appropriate, and you simply need an opportunity to say, yes, we agree, or no, we don't, at least for that limited purpose I'm provided to permit the Committee to retain an expert right now. Whether you need one after that I'm not convinced yet.

MR. BENTLEY: Understood, Your Honor. Our objective

is to work as closely with the debtor as possible to avoid duplication and to be quite reasonable and efficient, as I believe we have been in this case with all of our fees. We've never had any objections to our fees in this case, Your Honor.

THE COURT: All right. I will take an order on a certification of counsel, but I want a budget attached to it, and I reserve the right to determine when I see it, because I haven't, whether the budget is or isn't reasonable. If I think it isn't then I'll simply contact debtor's counsel and tell you to put it back on the agenda for the next one. Otherwise you'll get an order on the certification of counsel.

A SPEAKER: Thank you --

THE COURT: That will approve it for the limited purpose of at least analyzing for settlement purposes and for joinder in the plan negotiation process, whether the Equity Committee will support the debtor's expert or whether you need to go further. So I'll approve it for that limited purpose for now.

MS. BAER: Thank you, Your Honor. Your Honor, that moves us to agenda item number four, which is the motion of the ZAI claimants to modify orders with regard to certain quarterly fee applications. No objections have been filed to that motion. I believe counsel is on the phone.

THE COURT: Good afternoon. Mr. Sullivan?

MR. SULLIVAN: Yes.

THE COURT: Are you -- do you wish to be heard on item number four? I think -- I believe that a CNO was filed with respect to that, but very late.

MS. BAER: I have not seen one, Your Honor, but I think it's appropriate. Again, there are no objections, so I would then ask that the order be entered.

THE COURT: Well, actually I think the indication was that I was going to be getting an order in court.

MR. PALMER: Good afternoon, Your Honor. Timothy Palmer on behalf of -- local counsel for ZAI claimants. I have an CNO right here.

THE COURT: Has it been filed?

MR. PALMER: I believe it was filed Friday --

THE COURT: Friday.

MR. PALMER: -- Your Honor.

THE COURT: Yes. Folks, you know, there is a case management order. There's a reason for the case management order. This is the last month in which I am considering anything, even with late CNOs. The debtor's instructed in the future, don't send me these supplementals, I don't want them, I'm not going to see them, automatically put them on the next list. If there's not an emergency I am not shortening time. I am not entering orders where late CNOs are filed, put them on the next agenda. We're going to get things in some fashion so that I don't deal with all these supplemental matters that all

have come in in the last two days, including the package that arrived this morning in another case. So this is it, I'm not doing it again.

MR. PALMER: Understood.

THE COURT: All right, Mr. Palmer.

MR. PALMER: Thank you, Your Honor.

MR. SULLIVAN: Your Honor?

THE COURT: Yes.

MR. SULLIVAN: I'm sorry. This is Bill Sullivan. I was having a problem with my mute button. I just want to alert Your Honor that we did file one on December 6th, a CNO, and it just wasn't picked up, and that's why we refiled it. I apologize for that --

THE COURT: Okay. All right. Thank you --

MR. SULLIVAN: -- for the confusion.

THE COURT: I've signed the order as it's been presented. Thank you.

MR. SULLIVAN: Thank you, Your Honor.

THE COURT: Okay. This order does not -- Mr. Palmer, this order does not comply with my case management order. Now, folks, how old is this case and how long have case management orders been in place? In the --

MR. SULLIVAN: Your Honor, this is -- this is Bill Sullivan. Mr. Palmer was just handed that order by my office, so I'm the one who prepared it.

THE COURT: All right, then, Mr. Sullivan, I'll yell at you. How long has this case management order been in place?

MR. SULLIVAN: Several years, Your Honor.

THE COURT: Okay. Then in the future I am not going to sign an order that doesn't literally comply with the case management order. What agenda number does this relate to?

MR. SULLIVAN: 6824, Your Honor.

THE COURT: No, that's the docket index number. This is agenda number four on today's hearing list. That's supposed to be on here. Please put it on in the future.

MR. SULLIVAN: I'm sorry, Your Honor, I think this was all filed before the agenda was created. That's -- it was filed back on the 6th. That's why it wasn't on there.

THE COURT: Well, the one I'm looking at was just dated December 17th, so it couldn't have been filed on the 6th.

MR. SULLIVAN: Well, what happened was because it wasn't picked up by the debtors we went to refile it, and then we realized that it was filed, and my paralegal left on December 10th, and so there was a little confusion as to when it was filed.

THE COURT: Okay. Mr. Sullivan, regardless, the point is this. In the future you're going to be redoing these because I'm not taking them if they're not literally in compliance with the case management order. I've signed this one, enough said. Thank you.

MR. SULLIVAN: Thank you, Your Honor.

MS. BAER: Your Honor, agenda item number five is the debtor's motion for entry of an order authorizing the appointment of Raymond G. Thieme as our mediator for the debtor's ADR program, and, Your Honor, we filed a certificate of no objection on that matter.

THE COURT: All right. That order will be entered.

MS. BAER: Your Honor, I have duplicates of all of the orders where we filed certificates of no objection. If you'd like I can hand those up, or if you've already done so then --

THE COURT: I --

MS. BAER: -- I don't want to confuse the record.

THE COURT: That's the problem, since I was doing this from home I don't know where they stand, Ms. Baer. Maybe at the end of the hearing you can give us orders. If they haven't been entered I can take them, but I believe they all should be entered at some point in time today or tomorrow at the latest.

(Pause)

THE COURT: It'll just make it confusing.

(Pause)

THE COURT: Yes.

MS. BAER: Right.

THE COURT: I think we'll be better off without

duplicate copies since I have instructed my staff to enter them.

MS. BAER: Okay.

THE COURT: Okay?

MS. BAER: Thank you, Your Honor.

THE COURT: Thank you.

MS. BAER: Your Honor, the next matter on the agenda, item number six, was the debtor's motion with respect to the KWELMBS settlement. A couple of months ago you approved the settlement, and the only issue is what happens with the settlement proceeds. Very recently the two objections were withdrawn. The futures representative and the Asbestos Property Damage Committee both withdrew their objections. As a result I think this matter is now moot. The money will come in and simply go into the debtor's estate.

Your Honor, that moves us to --

THE COURT: Wait.

MS. BAER: I'm sorry.

THE COURT: Okay. Are you going to file something that moots this or withdraws it or --

MS. BAER: I can certainly do that.

THE COURT: -- grants --

MS. BAER: The motion was already granted. The order had a provision that provided it would be continued for this, so I'll submit some sort of an order on a certificate of

counsel indicating that it's moot.

THE COURT: All right. Thank you. Okay.

MS. BAER: Your Honor, the next matter on your agenda, actually the next two matters, the debtor's fourth and fifth omnibus objections, there are no objections that are going forward today and the matters that are continued to be contested are going to be continued to the January 24th hearing.

THE COURT: All right.

MS. BAER: I do have orders on those which you do not have.

(Pause)

THE COURT: Thank you. All right. I've signed item seven. And I've signed the order on item eight.

MS. BAER: Thank you, Your Honor. With respect to agenda item number one, this is the debtor's sixth omnibus objection to claims. Again, some matters are being continued to January 24th. One matter has been resolved with a stipulation which is attached.

THE COURT: Thank you. On item nine, this is -- I'm signing that order as well. Thank you.

MS. BAER: And, Your Honor, and actually on item number nine, that is the last claim that was outstanding on the sixth omnibus, so that will no longer be on the agenda.

THE COURT: Okay. Thank you.

MS. BAER: And, Your Honor, item number 10 is the status on the debtor's objection to the Massachusetts Department of Environmental Protection claim. As you may recall, Your Honor, this actually came up with respect to a motion Massachusetts filed on a setoff matter. Your Honor directed us to immediately proceed to determine what might the claim be that would set off. We have done some discovery with Massachusetts. I believe we will ultimately be able to do a stipulation with respect to the allowed amount of the unsecured portion of the claim. The other portions of the claim that were filed were really not claims, they were more of a notice to the Court of future potential claims as well as a notice to the Court of potential administrative claims. I would hope that we can work out with Massachusetts a stipulation that resolves the claim portion of this issue, and then we will get back to the setoff issue which I would suggest we can put back on the agenda so Your Honor can refresh your recollection and we can figure out where do we go from here.

THE COURT: All right. That's fine. So it's just continued for my purposes?

MS. BAER: Yes, Your Honor. And hopefully by the January hearing we'll have a stipulation for you.

THE COURT: All right.

MS. BAER: Your Honor, agenda item number 11 was the complaint of the Scotts Company. This is the matter --

adversary proceeding with respect to shared insurance. This is actually being continued until the January hearing. We are discussing whether or not we can come to a stipulation on a timing with respect to this matter.

THE COURT: All right.

MS. BAER: Your Honor, that takes us to agenda item number 12, which is the Libby claimants' limited motion to adjust an order vis a vis Montana Vermiculite Company. The debtor had no objections to that motion.

THE COURT: Does anyone? Did I get a CNO on this one?

MS. BAER: Your Honor, my information does show that you got a CNO on November 19th.

THE COURT: Okay. That order will be entered, too, then. Thank you.

MS. BAER: Your Honor, that takes us to agenda item number 13, which is the joint motion of the debtors and the Scotts Company for a temporary restraining order vis a vis litigation proceeding against Scotts. Your Honor, this is not the first time you've heard matters with respect to Scotts, but the landscape from the debtor's perspective has changed quite a bit.

When we were first before you in July Scotts was asking that the preliminary injunction be extended to enjoin actions against Scotts, and at that point in time, Your Honor,

the debtor's concern was shared insurance, that these cases may in fact relate to the debtors because there could be shared insurance. At that point, Your Honor, you directed that, first of all, the insurance companies not pay anything. Second of all -- at this time. Second of all you indicated that Scotts really needed to have the issue of shared insurance taken up and adjudicated by an appropriate Court, and Scotts then in fact did file a matter, an adversary proceeding in this Court.

Thirdly, Your Honor, you directed that the debtors did not have to participate in any discovery with respect to the Scotts matters. Since that time, Your Honor, it has been brought to the debtor's attention that discovery is proceeding, and while that discovery may not technically be against the debtors that discovery is very much against the debtors. Several things have happened, Your Honor. Number one, experts have been identified that include former Grace employees. Discovery depositions have gone forward where totally and completely the issue of Grace's Vermiculite, Graces Libby mining operations, the safety of the product, the safety of the operations are at issue. And thirdly, your Honor, some of Grace's own experts have been designated as experts in these cases, and those experts are being asked pointed questions about Graces Vermiculite and the Libby operations, and those experts are also being asked to provide documentation with respect to their testing of the Grace product.

Under these circumstances, Your Honor, we simply cannot stand by and let this litigation go forward vis a vis the Libby Vermiculite. To the extent that these cases have many other defendants, to the extent that the plaintiffs have cases against Scotts other than with respect to Libby Vermiculite, certainly we're not asking for those matters to be enjoined, but when it comes to the Libby Vermiculite we have to ask, Your Honor, that a temporary restraining order be put in place.

What's happening is discovery is progressing against the debtor. Testimony is being taken with respect to the debtor. The debtor is not there. The debtor is not in a position to be there, and its product is being put on trial. Under those circumstances, Your Honor, we had a serious record taint problem vis a vis the Mannville case, also consistent with Your Honor's order in the Maryland Casualty Gerard derived litigation here, which was recently sustained, if you will, by the Third Circuit when they overturned District Judge Woland.

We believe that this is a classic case of a situation where the debtor is being put on trial without being there, and it would be appropriate at this time to enter a temporary stay, and hopefully the merits of claims against the debtor and claims against Libby Vermiculite will ultimately be taken care of vis a vis the 524(g) injunction, our Chapter 11 plan and our various protocols for litigating claims against Grace. And,

Your Honor, I believe counsel for Scotts is here and would also like to be heard on the matter.

THE COURT: All right. Good afternoon.

MR. SIDMAN: Good afternoon, Your Honor. Robert Sidman of the firm of Vorys, Sater, Seymour and Pease, representing the Scotts Company. Your Honor, we're here before you today on a joint motion filed by both the debtors and Scotts because of an ever evolving reality that lawsuits now pending in state courts and probably to be filed in state courts against Scotts and others will inevitably implicate W. R. Grace and its products to the detriment of the W. R. Grace reorganization. We seek a temporary halt of those lawsuits until W. R. Grace can seek and obtain confirmation of a plan of reorganization that will hopefully resolve all issues regarding its liability to the plaintiffs and potentially resolve the alleged liability of Scotts as well.

Scotts's position can be simply stated and proven. The state actions name Scotts as a party defendant in and in some cases a new party defendant only recently because first of all, W. R. Grace is in bankruptcy and it cannot be directly named, and importantly, but for the presence of W. R. Grace vermiculite in the Scotts products Scotts would not be named in these lawsuits. An examination of recent events occurring relative to these lawsuits clearly shows how closely W. R. Grace and its products are involved.

First of all, plaintiff's counsel has affirmatively represented that any trial of these lawsuits would be tried as a case against W. R. Grace. Secondly, recent discovery has revealed a former Grace employee has been designated as an expert witness for trial purposes and his testimony focuses exclusively, as it must, because he only knew about W. R. Grace, it focuses exclusively on W. R. Grace and does not mention Scotts. Recent discovery of other experts, including a Dr. Lee and a Dr. Frank, make it clear that plaintiffs are largely interested in the alleged contamination of W. R. Grace vermiculite. And four, pleadings filed by plaintiffs in the state court actions focus almost exclusively on W. R. Grace vermiculite.

In addition, the peculiar behavior of the Rand Webber plaintiffs confirm the intent of the state court plaintiffs to make W. R. Grace the centerpiece of any state court trial. This Court may recall that at our last hearing on this issue it determined that an affidavit of plaintiff's counsel would help clear up exactly whose produce would be on trial in the state court lawsuits, and you orally asked plaintiff's counsel in that case to file an affidavit to that effect. As the initial date for the filing of that affidavit approached the Rand Webber plaintiffs agreed to postpone the then scheduled state court trial. After some subsequent haggling over the terms of an order on this issue this Court eventually issued a November

22nd order requiring that affidavit of the Rand Webber plaintiffs to be filed. That date has come and gone, and rather than filing the affidavit the Rand Webber plaintiff have now appealed the November 22nd order. The implication is obvious and confirms that the state court plaintiffs will put W. R. Grace and/or its products on trial in the state court actions. I should also mention for the record, Your Honor, that the Rand Webber trial is now set for February 14th, 2005.

THE COURT: So I have nothing affirmative now on record. I believe I had a statement on the record earlier that it was not going to focus on Grace's product, that's why I asked for the affidavit, and I now do not have such an affidavit.

MR. SIDMAN: That's correct, Your Honor.

THE COURT: Okay

MR. SIDMAN: Your Honor, the opposition to this joint motion rests upon two basic grounds. One is lack of jurisdiction and the other is lack of evidence. I would suggest that none of the objectors on the evidentiary side could possibly dispute that their recovery against Scotts depends upon bad vermiculite, and that they plan to show at trial that W. R. Grace was the source of that vermiculite.

With respect to jurisdictional issues, obviously we're not talking about a 524(g) issue at the moment, we're talking about 541 issues, property of the estate. We're

talking about 362 issues and we're talking about the operation of your preliminary injunction of January, 2002, meant to keep people in a status quo pending confirmation. I don't believe the jurisdictional arguments go to any of those points.

Your Honor, I could talk about Combustion Engineering. I don't think it's relevant and I'd like to save some rebuttal time in case the opposing parties believe it is relevant to the Court's ruling. But let me make one thing clear before I retire. If the state court -- if a state court plaintiff can try a case against Scotts without W. R. Grace discovery or use of any W. R. Grace facts at trial Scotts necessarily will have to defend and it will defend. It is only the ghost trial that will require Scotts to defend itself and expose W. R. Grace in absentia that we seek to prevent today. Thank you, Your Honor.

THE COURT: Who wants to argue on the other side? Oh, Mr. Lockwood, did you -- something first?

MR. LOCKWOOD: Your Honor, the individual plaintiff's counsel here will address the specific facts of their specific cases that are the subject of the motion. I would like to say a bit of an overview. The motion is drafted as not limited to the specific cases that have been talked about here, the Rand Webber cases and others. It basically would enjoin every potential plaintiff in the United States, or indeed, the world, from suing Scotts based on the facts that allegedly in respect

to two or three or four plaintiffs those plaintiffs have selected certain witnesses and said certain things about the way they're going to try their cases, and whatever else it seems to be can be said, at a minimum the showing that's been made here other than the basic proposition that because at least a chunk of Scotts products have vermiculite in them and Grace manufactured the vermiculate, that's about the only sort of global fact that's been presented here, and even that has been focused on the particular facts of the four cases. So I think for openers the relief that they're seeking is not supported by the evidence that they've put on, because they've only put on evidence with respect to a limited number of cases.

More importantly, however, the proposition that they are asserting here is not only inconsistent with Combustion Engineering, which as Your Honor knows there's a petition for rehearing pending, so that is still a little bit subject to question, but also is inconsistent with the Federal Mogul case, which was affirmed by the Third circuit. What you got here is two -- what you got here is Scotts is a non-debtor. It is being sued for its product. It -- so on the face of it there's no basis under Combustion Engineering or Federal Mogul for the injunction protecting it.

Now, why -- what are the grounds that are asserted to justify that protection of this non-debtor being sued for its independent viability? Two of them have been raised, albeit

one of them by the debtor in a footnote at this juncture. The first one, the footnote, is shared insurance. Unlike Combustion Engineering, where the Third Circuit questioned whether shared insurance would be enough to justify a 105 injunction, if not outright suggested that it wouldn't, it at least --

THE COURT: I don't really read Combustion that way, but okay, I think Combustion has some other caveats with it, but --

MR. LOCKWOOD: Well, there are -- there are a number of caveats, but at a minimum the Court didn't say shared insurance is a basis for a 105 injunction by itself. And in --

THE COURT: And as a permanent plan injunction getting jurisdiction over the non-debtors for non-shared insurance liability, yes, but not with respect to something that my implicate the debtor and the debtor's insurance, I think. I will look at it again --

MR. LOCKWOOD: Well --

THE COURT: -- Mr. Lockwood, but I'm not sure the Combustion applies to this circumstance. We're not at a 524 or 105 type injunction as a permanent matter here.

MR. LOCKWOOD: Yeah, but we are at a 105 injunction that is somehow or another going to be related to the plan, which I want to get to --

THE COURT: Yes.

MR. LOCKWOOD: -- in a minute, but the point I wanted to make about CE is that in CE the debtor agreed with the non-debtors that there was shared insurance. Your Honor found that there was shared insurance, and what CE said was, well, maybe there wasn't enough evidentiary facts of record and that -- possibly there should be a remand, except that it was mooted by the 105 injunction you didn't -- the holding as a whole that of the independent liability, so that they flat reversed the 105 injunction. They didn't remand for further findings on the shared insurance, at least so far.

Here, in contrast, the debtor and the insurers vigorously deny that there's any shared insurance, and that's why the debtor's statement on this thing is buried in a footnote some -- in its reply brief. They're not prepared to stand behind Scotts and say, yeah, we agree there's shared insurance here. So under Combustion Engineering at an absolute minimum if Your Honor was going to base a 105 injunction on shared insurance there would have to be an evidentiary hearing addressing the question of shared insurance. Now, there is in fact an adversary action that's been filed by Scotts, and depending upon when that action gets resolved by Your Honor and in what form, maybe Your Honor will decide that there is -- shared insurance over the what appear to be strenuous objections of the debtor and its insurers, and at that time there might be a predicate for addressing the question of

whether shared insurance was enough. But right now there is no predicate. All there is some person alleging that there's shared insurance and other people disputing it.

The second point has to do with what Ms. Baer characterized as record taint and what counsel for Scotts characterized as putting Scott as Grace's vermiculate on trial. The -- if you think about that proposition and you go back to the beginning of asbestos litigation and the Johns-Mannville bankruptcy, probably every asbestos case in this country could have been enjoined from proceeding against defendants other than Mannville because Mannville produced somewhere in excess of 30 percent of all the asbestos, and its prevalence was ubiquitous and the products of most manufacturers included Mannville asbestos even if they included asbestos from somewhere else. And one of the issues that was involved in the first asbestos litigation was the so-called state of the art defense, which was essentially, oh, we didn't know enough about the dangers of asbestos to put warnings on products that were manufactured with it. And so every time anybody went to trial with a case against somebody other than Mannville they were in effect trying the state of the art defense. They were trying in effect the case against Mannville, because that was one of Mannville's primary defenses, both as a producer of asbestos fiber itself and as a manufacturer-distributor of asbestos containing products.

Historically in this country you don't get to say that, well, I'm a manufacturer of a product that contains some sort of toxic substance and the manufacturer of the toxic substance is bankruptcy, so you can't sue me for my product because both I and the manufacturer want to argue that it's not toxic. As long as there is no collateral estoppel effect, which there wouldn't be with Scott, Grace is not in privity with Scott, it doesn't own it, it's not affiliated with it, it has no ability to control it, the worst thing that happens is that Scott some Jury somewhere decides that vermiculite is a dangerous product and it was in Scotts' own product and that it injured the plaintiff. For that binding -- that finding under the use of collateral estoppel in this country Jury verdicts for plaintiffs is not collateral estoppel on Grace. Indeed, it's not even collateral estoppel on Scotts. Every single plaintiff is going to have to prove with respect to Scotts that the vermiculite in that product was a dangerous substance that there was enough tremolite in that vermiculite to give rise to that plaintiff's disease, and if they win or if they lose the outcome is not going to be subject to collateral estoppel or res judicata against the defendant. And there has been absolutely no showing made by Scotts or by the debtor to the contrary here. All they want to talk about is witnesses, seizing on some snippet of Judge Liflin's opinion in the Mannville case which talked about how a witness gets his story

down and, gee, you know, once he's locked down, you know, he can't change it. They catapult from that into the notion that, well, basically if there's some witness out there who might testify in a case who Grace would want to use in Grace's case, that case shouldn't go forward because once the witness testifies his store is of record somewhere. Well, that's not a basis for enjoining unrelated cases against non-debtor defendants. If that were the rule I don't know -- I mean, I can't imagine the havoc it would wreak in the tort system about when companies unrelated to bankrupts would be able to go forward with litigation. I mean, witnesses -- expert witnesses, they talk about expert witnesses, these expert witnesses are experts for a multiplicity of defendant -- Dr. Lee, he's an expert in a lot of cases. Why is Dr. Lee even testifying in the Scotts case? If Grace isn't a defendant and he's Grace's expert, why is he there? Well, he must have -- he agreed to be hired by Scotts. Well, if Grace let's Scotts hire him or if Grace couldn't prohibit Scotts from hiring him, why should the plaintiffs somehow or another be barred from putting on a case because Scotts chose to use the same expert -- Grace? I don't know the facts. I doubt very much, however, that Dr. Lee is the plaintiff's expert. Maybe the plaintiff's counsel here can address that.

But, I mean, when you get down to it, the entire pitch here is incredibly broad. Let's go back to Federal

Mogul. When the auto manufacturers -- represented, I might add, by Kirkland and Ellis -- came into court, they made virtually the same kind of arguments about witness present prejudice and the possibility of collateral estoppel because they said that the brakes that they put in their cars that they were being sued -- or in trucks were being sued for had been manufactured by Federal Mogul, and that therefore they were in effect having to put on a defense of Federal Mogul's brakes in their cases. And the Court and the Third Circuit said, that's not good enough. And they said, that's not good enough even though there was a claim for indemnity that was asserted by at least Chrysler.

Here there's not one word of any indemnity claim over from Scotts against Grace in any of the papers that have been submitted to your Court -- I mean, to Your Honor. And I suggest to you that Grace will vigorously deny having any indemnity liability, but if they do it would be more of a kind of a, I don't know, contributory -- it would be something that in the words of Federal Mogul and Pacor Scotts would have to assert, litigate and prove, and that's not a basis for related to jurisdiction. Only automatic indemnity, so-called contractual, automatic indemnity has so far in the Third Circuit been held to be a basis for related to jurisdiction for these purposes. And CE reiterates that proposition, and there's been no showing here that there was any such kind of

indemnity here. So the bottom line is that apart from whatever the peculiarities of these three or four cases that Your Honor will get to hear from plaintiff's counsel from in a second, apart from that the general sweep of their argument here against all the plaintiffs in the world as to why they can't sue Scotts is grossly over broad.

The final point I would like to make has to do with the 524(g). Maybe I missed it, but we've got a proposed 524(g) on plan here -- plan on file here? And I don't think it's confirmable, but that's not really the issue. I don't see anything in that plan that purports to afford Scotts any protection from a 524(g) injunction. And moreover, under the CE decision I don't know how they could give Scotts protection, because Scotts is Basic and Lummus as far as this case is concerned, except it's not even affiliated. Basic and Lummus were closer to CE. They were brother-sister corporations. Scotts is totally unrelated.

So the notion that somehow we're using 105 as an interim protective measure to preserve the ability to have a 524(g) plan that would approve -- that would include Scotts, if that's one of the grounds that's being asserted here is --

THE COURT: Oh, that's not what I understood the argument to mean. I thought the argument was that through the 524 or some other means in the plan the debtor would figure out its liabilities to creditors, one of which may be Scotts. And

if in fact there's liability to Scotts that may take care of Scotts' liabilities to its plaintiffs, not that there would be a 524(g) injunction, just that in the chain of events that's may how it -- might be how it would shake out.

MR. LOCKWOOD: I don't -- I mean, look, under 524(e) of the Code if Scotts and the debtor are jointly liable for the Scotts product containing vermiculite, Scotts remains liable despite the debtor's discharge. 524(g) only enters the picture if Scotts is the beneficiary of a channeling injunction, and to do that Scotts would have to make contribution to the asbestos trust, the plaintiffs would have to in some manner or another, I believe by actual vote, vote to approve that. And whatever else you can say, this plan as yet doesn't provide that, and I don't see how it could provide it. So the bottom line, Your Honor, is that there's just really no basis for this Court to assert related to jurisdiction here based on the allegations and evidence, what there is of it, that's been presented here.

THE COURT: All right. What about the three or four cases that have specifically -- I mean, I did order an affidavit, Mr. Lockwood, and it somewhat troubles me that I have a representation that it's not the debtor's product that's at issue, so I say, fine, put it in writing, and I can't get it in writing.

MR. LOCKWOOD: Your Honor, I can only defer to the counsel whose case that is to answer that question, but I will

-- I will -- myself by saying that again, Scott -- Grace is Mannville as far as vermiculite is concerned. It can't fairly say, Scotts can't say that nobody in the United States -- remember, Scotts isn't the only potential company, there's -- I mean, Graces vermiculite could be in the products of dozens of manufacturers. I have no idea what it was -- the full extent of its use, as --

THE COURT: But these --

MR. LOCKWOOD: -- insulating material, there can --

THE COURT: -- but the issue is --

MR. LOCKWOOD: -- premises liability --

THE COURT: -- but the issue as I understand it with the vermiculite, and please, correct me if I'm wrong, is that vermiculite at least to know has not been proven to be a dangerous product in and of itself. The issue is, I thought, in the lawsuits that are pending against Scotts, the fact that this particular vermiculite came from Libby and may be contaminated somehow because of the fact that it came from Libby, and therefore has some tremolite component to it, allegedly.

MR. LOCKWOOD: I cannot say, Your Honor, whether there has ever been a judgment against Grace based on the proposition that vermiculite is contaminated by Libby tremolite or not. I don't know the answer to that, I suspect Grace does. But even there hasn't been any there's got to be a first time,

and Grace doesn't have the right to assert that the first time can only occur in a case in which Grace is a defendant. I mean, again, if --

THE COURT: Why not? I mean, if it's Grace's product that's at issue why isn't Grace --

MR. LOCKWOOD: It's Scotts' product. Scotts treated the product --

THE COURT: Oh, I see.

MR. LOCKWOOD: -- Scott sold the product. Scott is not being sued as the alter ego of Grace, although it would have you believe that that's the case, it's being sued as somebody who made its own product utilizing the vermiculite. It is true that it may well occur that in order to win the case against Scotts the plaintiff would have to prove that there was an asbestos containing tremolite in the Scotts vermiculite, and it may well also be true that only the Libby mine could be the source of that product. But the fact remains that the -- that the suit is still against Scotts and it's -- and it's Scotts who's going to have the defense about whatever it did to that product, both in terms of determining whether it had tremolite in it before it distributed it, its knowledge of whether it had it, whether the treatment and processing that it did of the vermiculite to make it into a Scotts fertilizer somehow or another operated to make the product less dangerous than it would have been in the pure form as it left the Libby mine, all

of those things are going to be something involving Scott. And the only thing that Grace is asserting here is that we want to be the right to control the venue of the -- of any Court that was asked to decide in front of a Jury whether or not, A, the -- our vermiculite contained tremolite, and B, whether there was enough tremolite in it after the processing that it went through to give rise to an asbestos related disease on the part of the plaintiff. And while I understand that they'd like to do that I don't believe the law empowers them through the use of a 105 injunction in a bankruptcy case to say that you can -- the Bankruptcy Court can enjoin all lawsuits against all defendants other than Grace where that issue might be presented, and where there's not automatic indemnity, and where there's no collateral estoppel on Grace. Thank you, Your Honor.

MR. CONAWAY: Good morning, Your Honor. Bernard Conaway on behalf of Donald and Judith Webber, on behalf of the Simmons and Cooper claimants, and the Lanier Law Firm claimants. I don't want to repeat Mr. Lockwood's remarks, simply summarize them and answer questions that the Court may have. I think the record will reflect that there is no corporate relationship between W. R. Grace and Scotts Corporation. There is no clear or unequivocal right to the insurance proceeds that Scotts now seeks to try to avail itself of. There will be no trial on W. R. Grace's product. The

product that is on trial in these cases is Scotts' and what Scotts did to that product.

THE COURT: Well, why can't I get an affidavit to that effect?

MR. CONAWAY: I think if I understood what Your Honor wanted was an affidavit that the plaintiffs would not use or would not introduce evidence or would introduce evidence that it used other suppliers. The parties reached an agreement, Scotts and the plaintiffs. The Court signed a different order. That affidavit was never entered. We have since appealed that order. But the fact of the matter is that even if it is true that Scotts only used W. R. Grace's product, that in and of itself does not preclude, A, liability against Scotts on the basis of what it did with that product, or B, implicate W. R. Grace's product for whatever problems it may have, or whatever hazards in and of itself it may create.

THE COURT: Why not? Because there may be evidence that Scotts didn't do anything to the product. I don't know what the evidence is going to show. But how can you start with Grace's product and say that the trial doesn't somehow impact Grace's product?

MR. CONAWAY: Because the trial here is a function of what it is Scotts did with W. R. Grace's product. They have independent tort liability for their handling or failure to handle, and then for failure or their warning of the -- how to

handle that product. Whether they did that or not is what is the subject of their liability, not necessarily what W. R. Grace's product had or did not have in it. As a predicate it will be necessary to show that W. R. Grace's product had some asbestos in it. I don't think that's a mystery here. Does anyone in this courtroom believe that that isn't true?

THE COURT: I don't know whether it's true or not.

MR. CONAWAY: Is anyone arguing to the contrary?

THE COURT: I don't know that.

MR. CONAWAY: The Third --

THE COURT: -- I'm not involved in that trial.

MR. CONAWAY: -- the Third Circuit has said in its most recent pronunciation on this case that, sure enough, that vermiculite was contaminated with tremolite. I don't think we're arguing over a mystery here. We all know what was in the product. The question isn't W. R. Grace's asbestos, the question is, what did Scotts do, if anything, to deal with that, and did they warn anyone?

I have here Patrick Haines from the Lanier Law Firm, and I asked him to come up. His admission has been moved, Your Honor. I have the order. It was not signed, and I can present it to the Court. I'd like Mr. Haines to talk to the Court and explain to the Court the nature of the allegations as they are made against Scotts. And it will be important to understand that the difference between what those allegations are as

between Scotts and what they might have been against W. R. Grace. I also point out that in each of the cases that we're talking about here, Your Honor, W. R. Grace's name shows up nowhere. They are not a party to the litigation. And the fact that we are using, or some of their experts show up, are absolutely correct. W. R. -- excuse me, Scotts has hired these people. And to now complain that we are deposing them? What logic does that make? We should not depose them? Is that what I understand that to mean?

Your Honor, just to wrap up a few points before Mr. Haines speaks, there are no indemnity rights here. There is no right for W. R. Grace -- or, excuse me, Scotts to impede or encroach upon the debtor's assets. It simply is not there. None of the case law to date would support this Court taking this action on the basis of that. There is no derivative liability here. There's no corporate relationship between Scotts or W. R. Grace for which this Court would be rightly concerned that the assets of the estate would somehow be affected. There is no corporate affiliation between W. R. Grace and Scotts, none whatsoever. They are separate entities, always have been and likely always will be.

Your Honor, if I could indulge you I'd ask to bring Mr. Haines up so that he might --

THE COURT: All right.

MR. CONAWAY: If Your Honor would like I could pass a

copy of the pro hac order up.

THE COURT: All right. I'll take it.

MR. CONAWAY: It was filed. If I might approach, Your Honor?

THE COURT: Yes, thank you. This was filed, sir?

MR. CONAWAY: Yes, it was, Your Honor --

THE COURT: All right.

MR. CONAWAY: -- on December -- I believe December 15th. We have the docket number that appears at the bottom. My understanding was that we did turn it over to chambers for signature. I think in the holiday rush things have not moved as smoothly as we would like or --

THE COURT: All right. That order is entered. Thank you. I have to ask this question for the record. Mr. Haines, I have never as far as I know laid eyes on you, but I have a first cousin whose name is Patrick Haines and I need to make sure that you're in fact not related to him, since it's spelled exactly the same way.

MR. HAINES: Where does your cousin live?

THE COURT: In Florida.

MR. HAINES: No, never been to -- I don't have any relatives in Florida. That's a first on me, Judge.

THE COURT: All right --

MR. HAINES: I actually have appeared before you in the Pittsburgh Corning context. I'm a member of the Committee

for Pittsburgh Corning bankruptcy case, so.

THE COURT: Okay. Thank you.

MR. HAINES: May it please the Court, I appreciate the opportunity to come up here and visit with you, Judge. We were some of the first lawyers I guess in the country to file complaints against Scotts. We represent probably close to a hundred mesothelioma victims, I guess at this point, that have named Scotts in their complaint. In those complaints no allegation is made that it's in any way derivative of W. R. Grace, that W. R. Grace is somehow tied into the case. Frankly, from our point of view I don't really care where Scotts got the asbestos they put in their product. The important thing to me in the litigation of this case is the fact that Scotts sold the product that exposed my clients to asbestos that they could breathe in that was a causing factor of their disease, and that's what I'll have to prove at trial. Where they got that asbestos from really does not matter to me, frankly. I just have to prove that there's asbestos in the product, that my client was exposed to it and it was the cause of his disease. So I think that's why I haven't really focused on whether it was Grace vermiculite or whether it was from North Carolina or whether it was from Africa or wherever in the world.

It really doesn't matter to me. It's a raw component that went into fertilizer, product that Scotts made, and we all

know fertilizer and we know most of us have seen Scotts. It's a product that for many, many, many years was on the market and never bore any indication that it contained asbestos. Scotts after a certain period of time in the 1970s was certainly aware that they were using a product that was contaminated with asbestos. They chose not to substitute with some other type of ingredient. They chose not to warn their -- put a warning label on their product. And that's what I'm seeking to hold them liable for.

I'm not going to call people from Libby Montana. That frankly has nothing to do with my case. I think what happened in that one instance where Thomas Adkins was listed as a witness, I worked at Baron and Budd, Your Honor, for about six years, and we created most of the witness lists which are in existence in the State of Texas, including I think the one that's at issue in that case. They just get copied and they get used, and they have a life of their own. And even after companies go bankrupt people continue to use them. If those lawyers were seriously going to call Mr. Adkins as a witness I can't fathom why. I don't know what relevance his testimony would have. Any former employee of Grace that worked in the mine, I have no idea what relevance that would have.

My case is simply to prove asbestos caused my clients' injury. We had been to the Scotts repository. We've looked at their documents. We're in the process of going

through those. We would hopefully soon depose the Scotts corporate representative on these matters. I'll depose whatever experts Scotts designates, and that's how I'm going to try my case, Judge, based off the documents that Scotts has, the experts that they call, the experts that I designate, that's -- and my client who identifies the product. And none of that has anything to do with W. R. Grace.

Their biggest complaint I guess is that they don't have Grace in the courtroom with them. That happens every time you have a bankrupt defendant, Judge. That's happened since 1982 when Mannville went down. Everybody had to -- had to deal with that. The question that will be submitted to the Jury, at least in Texas, where I'm from, is going to say, was the Scotts product defective? It's not going to have anything on there about W. R. Grace. It's not going to say anything about vermiculite. It's going to talk about Scotts and the turf builder or whatever the product is my client identified, and was that product defective, was there a failure to warn, was it a cause of the injury to my client. And whatever the finding of the Jury on that issue, yes, no or I don't know, that's not going to have anything to do with W. R. Grace, Judge. And I'm happy to answer any questions you might have about the vermiculite process, or I don't want to get tied down into a bunch of stuff that I don't think really matters because at the bottom -- the bottom line, Judge, is we want to proceed against

Scotts because they made a product that has asbestos in it. And frankly, I don't see any way W. R. Grace factors into that trial. I'm not going to get up and make in my opening statements that these are the agents or the -- or the -- working for Grace. That doesn't really matter to me, Judge.

THE COURT: Well, I understand it may to you. I don't know whether it will to somebody else, and I guess that's the issue that they're asking me to address. But --

MR. HAINES: And I would just hope --

THE COURT: -- I get your point.

MR. HAINES: -- my case that doesn't get stayed because of their theory, and -- because that's not they way we're going, Judge, and I just would like the opportunity for the folks that I represent, Dr. Williams, whose case I'm hoping to set for trial next spring, is a person who is not one of those cases where he's got 60 defendants -- that we've identified exposure to. Scotts is pretty close the only exposure he has. And he's a living mesothelioma case. He's a pathologist from Duke University. He's got a huge loss of income, and I want to try his case, and I want -- and I want to get it -- get him up there while he's still alive. And I don't -- I don't see that there's anything here that I could explain to him when he asks me, why did my case not go forward, I don't see how W. R. Grace -- how do I explain to him that W. R. Grace stopped his case from going forward when all he sued is sued is

Scotts. Thank you, Judge.

THE COURT: All right. Thank you.

MR. CONAWAY: Your Honor, if I could indulge you for just a few moments, I want to draw your attention to page three of the Lanier response. I point out that it goes through what I think is some fairly significant detail about the product that Scotts is being sued for. It talks about the vermiculite, how it was used, and the things that Scotts did to that product, separate and apart from what was delivered to it by W. R. Grace. That I think is important for a couple of reasons.

One, it clearly shows that the fundamental foundation for liability here is Scott's processing and handling of its own product. It also goes clearly to the heart of the argument that there is insurance coverage here. The insurance carriers have consistently maintained their objection to coverage here in part based on the premise that the coverage as it's written does not apply to those who repackage, rebrand and reprocess. And that is clearly what has happened here.

Lastly, Your Honor, and I thank you for indulging us, I ask that Your Honor not consider the affidavits that Scotts has attached to its motion. These are at best whispers between lawyers. They have cut snippets and pasted parts from pieces of documents, none of which are before this Court. Thank you, Your Honor.

THE COURT: Anyone else wish to speak to the motion

before I ask Scotts' counsel back? Okay. Thank you.

MR. SIDMAN: Thank you, Your Honor. I'll make several hopefully brief points. First thing I'd like to do, Your Honor, is point out that on page two of I believe the Lanier papers in opposition to the joint motion, the following statement is made, and I want to read it carefully and slowly. It says, the sole legal and factual issue in the state court actions against Scotts will be whether or not Scotts extensive processing and trianizing of the vermiculite eliminated the possibility of asbestos exposure to the consumer. The word, eliminated, necessarily means that what Scotts got from its suppliers was in some contaminated, and that, no matter what the plaintiffs' counsel say, they cannot assure this Court, they will not assure this Court because they've refused to do it, that W. R. Grace's vermiculite will not be on trial in the state court actions. Scotts' as a matter of fact position if required to defend it is that they made the product safer with their processes, but the premise of their liability has to be that there's something bad about the product, and the bad came potentially from W. R. Grace.

THE COURT: Well, I recognize that that's the case, and I also recognize that that's why Scotts would like W. R. Grace in the case and/or not to have to go forward without W. R. Grace, but frankly, I still think this is so attenuated. I do not see a basis to extend the injunction. I really just

don't see it. I don't think this is any different -- well, I shouldn't say any, I guess that's a bit of an exaggeration. This isn't substantially different from the Federal Mogul issue. I think it is different from the Combustion Engineering case, but I do not think it's much different from Federal Mogul, and these are exactly the same arguments that were raised in Federal Mogul. Jurisdiction was clearly refused in that case. Now, it was a difference because the issue was whether or not some state court action should be taken into the federal system and prosecuted there as opposed to whether or not an injunction should issue against those state court actions, but I really have some difficulty seeing the basis for jurisdiction. This is not in my mind the same as the Maryland Casualty Gerard issue. That seemed to be a direct attack against Grace. This doesn't. This seems to be an attack against Scotts where Scotts may like a liability over theory against Grace, and that may be the only defense that you have in the case without Grace there. That's all possible, but I don't think that that's a basis on which to enjoin the actions going forward against Scotts. Unfortunately it may mean that there's additional litigation against Grace down the road, but I just don't see that that's a basis for extending the injunction that far.

MR. SIDMAN: Your Honor, let me make two points, if I would. I think someone made the claim that Scotts has not said

it has an indemnity claim, and if that was an omission I should have stated that we do. And if we lose a state court case based upon, as we can show, that the W. R. Grace vermiculite was bad, we have an indemnity claim in this case, and we believe it's a post-petition indemnity claim.

THE COURT: Well, on what basis?

MR. SIDMAN: On the basis that their product was the one that caused the damage --

THE COURT: Oh, well, I mean --

MR. SIDMAN: -- not our processes.

THE COURT: -- you always have that. That's not an indemnity claim. That may be a lawsuit over against Grace for selling you a defective product, but that's not an indemnity. If you don't have a contract whereby Grace says, look, I'll indemnify you if you purchase my product and spread it on everybody's lawns, that's a different -- that's a different issue. I --

MR. SIDMAN: Your Honor -- Your Honor, I beg to differ. I think there is common law indemnity that would exist in this case.

THE COURT: Well, whether or not there is I think Mr. Lockwood's quite correct. The Circuit has been very explicit that that's not enough to assert jurisdiction over a claim, because it's so far attenuated. You've got so many steps before you can go forward proving that type of an indemnity

against the debtor that at this stage of these proceedings that's really not worth the paper it's printed on. It may be at some point but it isn't right now.

MR. SIDMAN: Your Honor, then I'd like to suggest that if indeed these actions are allowed to proceed that they must include the ability of W -- of Scotts to defend itself, which means discovery from W. R. Grace and being able to introduce evidence about W. R. Grace in the trials. Otherwise we're hamstrung. And the order that you issued earlier, which has now expired, suggested that somehow we could try these cases and defend ourselves without W. R. Grace, and I don't think we can.

THE COURT: I'm not lifting the injunction to let you bring -- the automatic stay -- let you bring Grace in. I mean, I indicated early in these proceedings if Grace was intent on joining this action on its own it certainly can do that. I'm not prohibiting Grace from doing it, but the automatic stay protects suits against Grace and I'm not lifting the stay to let Grace be sued. If Grace has an interest in participating in the discovery and defending its products it'll show up, and if it doesn't it won't. I can't see that there's a collateral estoppel consequence to the debtor provided that it doesn't show up in the case and doesn't take actions to litigate. It's not named. It's product's not directly involved in this suit because of the fact that the theory is that Scott did something

else to the product and repackaged it and distributed it, so I just think it's too attenuated.

MR. SIDMAN: Your Honor, do I understand, however, that your prior injunction against discovery from W. R. Grace is now expired and we can secure discovery from W. R. Grace in these trials? Because we're going to need it to defend ourselves.

THE COURT: Well, I don't know. I need to here from the debtor about that. So far as I know at this point in time I don't have motions for discovery against the debtor. And frankly, I don't recall what I said about the discovery. It was too long ago. So maybe you can refresh my recollection.

MR. SIDMAN: Your Honor, you said in July that you would not require W. R. Grace to participate in discovery --

THE COURT: Right.

MR. SIDMAN: -- the state court suits, and that would -- that prohibition would last until the plan was filed, presumably then in October, now it turned out to be November. But that was the duration of that alleged order that said, you can't make W. R. Grace participate in the discovery. Our position is that expired by its terms, and we would intend, as we must, to defend ourselves by involving W. R. Grace in discovery.

THE COURT: Ms. Baer? I mean, at this point in time the debtor apparently is going to propose a different plan, but

the extensions that I gave the debtor to get a plan on the table have come and gone and the debtor seems to be moving in the direction of confirmation, so --

MS. BAER: Your Honor, we -- Your Honor, we are moving in the direction of confirmation, but as I understand it there are something like, I think it's 90 lawsuits that are currently pending against Scotts. If Grace is forced to -- to get involved and participate and defend itself in discovery, at this critical junction in the Chapter 11 case we're going to have a lot of matters that are going forward that are specifically and completely the reason why we have a Section 362 automatic stay and why we have a 105 injunction. The debtor can't be expected to be defending itself in cases with respect to Libby vermiculite. That's why we have the automatic stay and the injunction. And at this critical juncture, when we're going forward in the hopes of confirming a plan, setting up estimations and setting up case management and a way to litigate asbestos related claims against Grace in the Grace case, Your Honor, I would have to ask --

THE COURT: But I don't think you're being asked to defend yourself. I'm specifically not permitting you to be -- to -- I'm specifically not lifting the stay at this stage to let you be joined. The question is whether you have information in the debtor's possession that's relevant to somebody else, and if so, why doesn't -- why can't it be

produced --

MS. BAER: Well, Your Honor --

THE COURT: -- I mean, just like any other entity has to produce it?

MS. BAER: Your Honor, you sound like it's a minor thing, but you're talking about discovery vis a vis the Libby vermiculite --

THE COURT: Well --

MS. BAER: -- very significant discovery, rooms full of documents --

THE COURT: Well, if they're together --

MS. BAER: -- that have essentially been shut down during the course of this Chapter 11 case.

THE COURT: Well, I'm not sure why they need to be permanently shut down. I mean, at some point in time this -- these cases are going to go forward. This case was filed in 2001. It's been here a long time to stop people from doing anything against the debtor. How the debtor's made use of its time, that's kind of up to the debtor. It seems that the debtor at this point's on track toward at least trying to get some plan together, but I'm really not at all sure why the debtor shouldn't have to come up with at least a document production plan. To the extent that they want to take depositions of current officers and directors who are involved in the reorganization, that's probably going too far, but to

the extent that they want to take depositions of former employees who don't even work for the debtor anymore, I don't see how that's going to impact the reorganization at this stage.

MS. BAER: Well, again, Your Honor, it's a matter of personnel. It's a matter of the people who are actually very involved in this Chapter 11 reorganization working with us to put together the TDPs, the trust plan and the procedure for moving forward to litigate asbestos claims are the very same people that -- attention will be diverted if they have to respond to discovery from Scotts if they have to participate in or at least be at the depositions, be at discovery production, in order to control and produce and help with, if you will, information vis a vis the Libby vermiculite.

THE COURT: Well, at the moment I don't know that I have -- if I do I apologize -- I don't think I have before me some motion directed to the debtor which the debtor has contested in the way of discovery in those suits, so I suppose it'll come up in the normal course and I'll deal with it when it comes up, if that's the case. But I really do not see a basis to extend this injunction to Scotts. I just can't see it.

MS. BAER: Your Honor, my concern is you have tried so many times here to limit this, to make sure that Grace is not forced to do --

THE COURT: Yes.

MS. BAER: -- things that Grace's product is on trial, and unfortunately we've all failed. The fact of the matter is the discovery that is going forward is about the Grace product. If you're going to prove that Scotts did or did not do something, you get into what did Scotts have in the first place, what was it working with, and that goes right back to the Libby mine, the Libby mining operations. Grace's failure to warn has been put at issue in the discovery. Every single time we try to limit it they go back, and the next thing you know is question number two after question number one sounds okay is something vis a vis details of Grace's operations, Grace's product.

THE COURT: Well, I don't think Grace has to, and in fact I don't think Grace can be at this point compelled to do anything in the way of what would be a liability overclaim. I mean, there is a bar date in the case. People file claims. That's how we litigate claims against the debtor, not in some state court action. But the debtor may have documents, witnesses and other things that are relevant to cases beyond matters that apply to the debtor. And I think the law is pretty clear that just because the debtor is in bankruptcy doesn't forever bar the debtor from having to comply with legitimate discovery requests. So I think what I need to do is get the discovery requests filed. If the debtor objects to

them I'm sure I'll have a hearing, and I'll reserve jurisdiction so that I can determine whether or not it's an unreasonable burden on the debtor to have to comply. To the extent the debtor has document production rooms available I don't know how difficult that's going to be, to let Scotts have access to document production rooms. I mean, I think whoever made the point about, you know, Libby asbestos, not necessarily vermiculite, is probably correct. So I really don't at this stage know what all is going to be involved for the debtor. I don't intend to let it get out of hand so that the debtor cannot go forward with the reorganization. But if there are reasonable discovery requests I think the debtor ought to comply. But the question's whether they're reasonable. I certainly will not permit ongoing depositions of current officers and directors who are involved in the reorganization. I think that's outside the scope. There may be a way where, you know, ten interrogatories may be appropriate to answer. Starting to get to 20, that might be excessive. So there are some parameters that may apply. But I think what should happen is that if in fact somebody wants discovery from the debtor they ought to file an appropriate discovery request from the debtor and have the debtor object to it. But I reserve jurisdiction, because of the nexus with the bankruptcy and the reorganization issues, to hear those matters.

MS. BAER: Thank you, Your Honor. I suspect you'll

be seeing us again, and we'll take it one step at a time.

THE COURT: All right. I need an order, I think, that puts this issue to bed and denies the request to extend the injunction.

MR. CONAWAY: Your Honor, if you would like, we'll prepare one, circulate it among counsel and submit it under a certification.

THE COURT: All right. That's fine.

MR. CONAWAY: Thank you, Your Honor. With your permission, may we be excused?

THE COURT: Yes, sir. Thank you.

MR. CONAWAY: Thank you.

THE COURT: Ms. Baer?

MS. BAER: Your Honor, that takes us to item number 14, which is somewhat related. With respect to the adversary proceeding filed against Scotts, they filed a motion to lift the preliminary injunction so that the adversary proceeding would not be a violation of it. This matter has been continued to January 24th. We are in discussions with respect to procedurally how this should move forward and would want to take it up in January.

THE COURT: All right.

MS. BAER: Your Honor, item number 15 on your agenda is the thirteenth quarterly interim application of counsel for attorneys' fees and expenses. I believe certificates of

counsel have been filed.

THE COURT: All right. Those order will undoubtedly be entered.

MS. BAER: Your Honor, that takes us to the last item on the agenda, which is basically speaking a status vis a vis the Grace Chapter 11 plan disclosure statement and related items. Your Honor, as you may recall, on November 13th the debtors filed a plan, a disclosure statement, an estimation motion, a new case management motion and solicitation procedures. You have set the disclosure statement, estimation, case management to the extent you have jurisdiction all for hearing on January 21st. You set solicitation for January 24th. Objections to all of these matters are currently due tomorrow, December 21st.

Since that time, Your Honor, we've done a great deal of discussing among our various constituency. We've also done a great deal of thinking vis a vis the best way to approach and usefully use the time that you've allotted for us to begin this process. In that respect, Your Honor, I'm please to announce that the Equity Committee, the Unsecured Creditors Committee and the debtors have in fact come to terms and will be shortly filing a joint Chapter 11 plan and will shortly be filing an amended disclosure statement that reflects the agreements that they have reached, and also the amended disclosure statement will reflect further changes that have been suggested to us by

various people, like the SEC, the PPGC, people who have contacted us already about potential changes.

Your Honor, as a result of that we suggest in a protocol that we filed last week a way to approach the January hearings that will in fact delay the hearing on the disclosure statement for 60 days. It was our feeling, Your Honor, that estimation here is the key to moving forward with this case. And estimation and the estimation motion that we have filed clearly will take a great deal of this Court's time as we decide how to move forward, both with respect to the asbestos personal injury as well as asbestos property damage and ZAI. Under those circumstances, Your Honor, we don't think we will get to disclosure in time. And frankly, we don't think we necessarily should because until these matters are really resolved, or at least the procedure for how they're resolved have been decided, the disclosure statement really cannot reflect exactly where we go next. So under those circumstances, Your Honor, we notified the various committees last week that we were going to ask that the disclosure statement part of the hearings in January be continued for 60 days and that correspondingly the response deadline on disclosure statement objections that's now set for tomorrow, as well as on solicitation procedures that's now set for tomorrow, be in fact continued so that we can all focus on estimation and case management.

THE COURT: Well, it doesn't make much sense to get objections to a disclosure statement if you're -- if you're going to modify it. I might as well, I suppose, wait for that. With respect to solicitation, though, is that going to change?

MS. BAER: Your Honor, I think that it's not necessarily going to change but until we get to the point of the disclosure statement being ready to approve, it doesn't really much matter whether you take up solicitation in January or you wait a couple of months to take it up. And again, wanting to use people's time usefully and not have them have to spend a great deal of time preparing for things that don't necessarily need to be taken up in January it was our thought that they sort of go together and they would be continued.

THE COURT: All right.

MS. BAER: That turns us, Your Honor, to the protocol, and I simply want to suggest to the Court that it's the debtor's position that estimation should go forward, should be the primary and first matter on the agenda in January. In addition, Your Honor, we're filing a supplement to the estimation motion today that requests a ZAI bar date and very simple proof of claim form for ZAI. The estimation motion that was filed concentrates primarily on personal injury. And in retrospect in thinking about going forward, it seemed to us that it was logical, and we did not have to hold up proceeding with respect to ZAI and could in fact go forward and ask for a

bar date there. So again, that matter is being filed today. We would suggest, Your Honor, and request that that matter be taken up at the same time as the estimation motion itself on January 21st.

With respect to case management, Your Honor, as we've indicated in our -- in our protocol papers as well as a copy of a motion you should have received, we've asked Judge Buckwalter to transfer back to you or refer back to you the old case management papers we filed a couple of years ago. We filed for you as well as Judge Buckwalter the new case management papers. Your Honor, in going back and reviewing the record, it's very clear that you do have jurisdiction over and can hear the new case management orders. Judge Woland did not withdraw the reference of all asbestos personal injury matters in this case.

What happened, Your Honor, was you transferred to him specific pleadings. The specific pleadings you transferred to him are the old CMO pleadings. We would like to go forward with a new CMO. We'd like to go forward with the new CMO in the January hearings. We're giving Your Honor a choice. The new CMO is a litigation protocol and procedure for post-confirmation litigation. The old CMO was a litigation procedure for pre-confirmation litigation. Given how many years have now passed and where we are in this case we believe the new CMO motion is the way to go to logically get this case concluded in the shortest amount of time. But, Your Honor, we

believe you should have the choice. That was the reason we asked Judge Buckwalter to transfer back to you the old CMO. We have been in contact with his chambers on numerous occasions. He has yet to set any briefing schedule, any hearing date or rule on our request to transfer back to you, but we do not believe that that needs to delay anything vis a vis going forward in the January hearings.

THE COURT: Okay.

MS. BAER: So, Your Honor, we're not really asking for any relief from you at this time. We're suggesting a protocol, and then we are asking that the disclosure statement hearing and the deadlines for objection to the disclosure statement, the response and the objection charts be delayed.

THE COURT: All right. Well, with respect to the estimation, are you convinced at this point that I can go forward with the estimation?

MS. BAER: Yes, Your Honor. We don't think there's any issue vis a vis jurisdiction there.

THE COURT: Okay. Thank you.

MS. BAER: Your Honor, I assume others would like to be heard.

THE COURT: I imagine. Mr. Baena?

MR. BAENA: I'm glad counsel -- may it please the Court, Scott Baena on behalf of the Property Damage Committee. Good afternoon, Your Honor. I'm glad counsel pointed out that

the proposed protocol was announced last week. Indeed, it was late last week, as all the other constituencies, I suspect, were cobbling together their objections to the disclosure statement and the variety, the wide variety of documents that were filed by the debtors. And it sort of took us by surprise, as does the news this afternoon that a new plan yet is going to be filed. And it may even take some of the wind out of our sails to some extent.

Let me say on behalf of the Property Damage Committee -- and I'm only going to address property damage if I may, Judge -- first, our estimation issues are a lot different than everybody else's. They're different for two different reasons. In the case of traditional property damage there's never been an estimation process or model that's been approved by a Court in another proceeding. And so what we need to do in respect of property damage is altogether new. It's a new experience. It's been done consensually before but not through the intervention of the Court. And so it engenders different concepts than personal injury. It factually is different than personal injury because we have proof of claims. We had a bar date. We had a proof of claim form. And we do believe we have to address how we're going to go about estimating traditional claims, and we're prepared to do so.

The motion that was filed by the debtor in that regard, Judge, told us exceedingly little about how they would

go about the process in regard to traditional property damage. And we would wish to fill out that agenda for you at the next hearing. By no means are we going to be an impediment to going forward with that process. You've made it clear you want to do it. We wish to do it, too, but we wish to do it in a sensible way, and the debtor hasn't offered up that proposal.

On Zonolite it's hard for me to comment because we just learned from this late filed, whatever this pleading is, regarding our proposed protocol that there's going to yet be another filing made of a estimation motion with respect of Zonolite. That's interesting. It's interesting because we can only speculate what it says. And it's also interesting because it sounds like we're going to throw away about five million dollars of effort and a pending decision that Your Honor I thought was going to make as a result of summary judgment motions that were filed and heard by you. And I gather that we're just going to scuttle this whole process now because the debtor heard enough during the course of all of that to conclude for itself that you can have now proof of claim forms for every Zonolite claimant regardless of the risk of harm that started that whole process two years ago. All I can say is we'll comment on it when we see it, but I sure don't think, Judge, that we've heard an explanation why or how we can proceed with Zonolite while the other matter is still under consideration by the Court.

In regard to the case management motion, that's where we do have a bit of a disconnect. As Mr. Lockwood has alluded to at least twice so far today, the plan that was filed by the debtor, Judge, you don't have to read 524(g) too long to come to the conclusion that by virtue of it and by virtue of 1129 that plan is dead on arrival. So it's good news that they're going to file a new plan, but it doesn't like they're going to correct any of the problems that they have with the existing plan. It seems to me that designing a post-confirmation case management procedure in the context of a plan that is dead on arrival, or a plan that has not even yet been filed, is a fool's errand. What are we -- what are we planning for until we've had an opportunity to vet and discuss and consider whether we're even going to object to the plan that has yet to be filed? So the sequence of events here are very odd as they're proposing it. We should argue at the next hearing about the case management procedures that would be used by the debtor and its confederates under a plan that we haven't even seen. How could we possibly agree to that? How could you possibly force us to undertake such a ridiculous scheme of things?

THE COURT: Well, I don't know about forcing you to undertake something that's in a ridiculous scheme of things, but it seems to me that that is something that is worthy of consideration, that is, to consider whether or not some of the

claims that may be disputed could in fact be litigated in a post-confirmation format in a structure that the parties agree to, which may be, you know, mediation, arbitration, it may not, may actually be claims litigation. It may be worth your folks talking about whether that's a structure that will get you toward -- further toward confirmation.

MR. BAENA: Happy to talk about it, Judge, but when you read the case management motion that was already filed you -- what really strikes you is how little it says after you get past the point of proof of claim forms and objections to claims, which is really the guts of the CMO proposal. They say, we're going to use Rule 42, common issue trials. Well, that's fine. About what? Well, some common issues that may emerge if our objections aren't sustained. Judge, there's not an awful lot to discuss. I don't even know that you have to enter an order that basically says, well, the rules say you have that right, and we really mean it. When we get there we'll get there. I think the important point also is that they'd like you to have a choice between this new construct, which is post confirmation, and their old construct, which is now four years old. However, I don't think you can make that choice at this point in time because the old construct is still in front of Judge Buckwalter. He has not referred it back to you. And I really do think as far as case management procedures are concerned we may be biting off a little bit more

than we can chew on because, A, I don't think it's before you, and B, we shouldn't be addressing procedures that are not connected to a plan that we've even had an opportunity to examine.

THE COURT: Well, I have to agree that I don't think I'm in a position to making a choice, because I don't think the issue of the pre-petition case management at this point's before me. You know, if Judge Buckwalter does send it here then I suppose it will be before me, but as far as I know it's on his docket and he'll decide what he wants to do with it, so unless and until it's sent back I don't think that's "a choice." I suppose in terms of looking at whether or not a post-confirmation litigation structure makes sense as part of a confirmation issue rather than doing it pre-confirmation, the debtor could probably put that into a disclosure statement and plan concept and it would work. I don't know why it has to be done pre-confirmation in all instances. I think the debtor could choose to do it that way, and that may obviate the need for Judge Buckwalter to do anything with the pre-confirmation one.

MR. BAENA: Except that the debtor has said again that the next plan, too, will be a 524(g) plan. And so is the debtor going to design the case management procedures that may be applicable in the case of a trust? I think we can't get too far ahead to --

THE COURT: Until the plan is filed.

MR. BAENA: -- speculate --

THE COURT: Yes, I --

MR. BAENA: -- yeah.

THE COURT: -- and I tend to agree with that, too. I think, as I said earlier, in theory, I think in theory it's all right. I'm not overly familiar with that kind of a concept, but I have seen issues which have been litigated post confirmation before that, you know, the plans can get confirmed subject to the outcome about litigation. I don't see that as a confirmation problem.

MR. BAENA: Right. I'm just afraid that we're going to design a system that's going to always be applied by exception. Until we identify what it is that happens post confirmation we're going to create a set of rules that may not really work because they didn't anticipate what it was we were doing post confirmation. But what does also concern me about the proposal that we put everything off, Judge, is sort of a little bit more subtle, but when you say the word it becomes very obvious. What the debtor is doing now by truncating, or proposing this truncation, is that they're getting the benefit of the exclusivity for some untold period of time as a result of all this. They've agreed that the plan that we all had been working with is not going to go forward. They assert that they're going to amend that plan and join other proponents. I

don't know when that's happening. But --

THE COURT: Well, I think we're going to set some deadlines for that because at this point, frankly, I'm not too inclined to postpone anything. So if --

MR. BAENA: Well, Judge, I will say that if they file another plan that is likewise constructed around these implausible applications of 1129, 1126 and 524(g) that we shouldn't be held captive here till the end of the day, confirmation hearing, to find out that that plan is really dead. And we ought to get to the -- to the heart of those problems with those plans which make them unconformable so that we aren't stuck with exclusivity in, you know, with the debtor having exclusive right to file and now to solicit ballots in respect of a plan that's just never going to make it.

THE COURT: Well, I think one of the issues that I am going to want briefed if the next disclosure statement and plan also provide that the tort claimants are not going to have a vote because they're going to be paid in full and their claims aren't impaired is, number one, what the legal basis for that is under 524, if there's going to be an injunction; and number two, I want to know what evidence the debtor is going to show me that those claims are going to be paid in full on the effective date, because otherwise they're impaired. So it may be a moot issue. And I don't want to wait -- await the plan confirmation for that. That seems to me to be an issue that

should be litigated in connection with the disclosure statement hearing because if the debtor --

MR. BAENA: We actually perceive other overarching problems --

THE COURT: -- may be.

MR. BAENA: -- with the plan that they've filed, any one of which would end the prospect for confirmation of the plan. And maybe what we need to do, Judge, at this point is wait for their plan to get filed, give us an opportunity to identify what we consider to be overarching objections to confirmation, don't make us go through this whole plan confirmation process so that we can't argue to you those points until the end of the day. Let us bring that before you even if it's on a disclosure statement hearing. Let us bring those overarching objections to you.

THE COURT: Yes, I think the legal issues can be briefed -- and I think those are legal issues -- can be briefed in connection with the disclosure statement. There is no point going out with a plan that is not confirmable if that can be identified early on. So I think with respect to legal issues that's probably a good idea, and what we need are some dates. With respect to the Zonolite issue, I'm -- I haven't seen the motion to set a bar date, so I really don't know how it affects what I've got by way of summary judgment. I was hoping that maybe the motion itself would articulate that, but --

MR. BAENA: Well, according to the motions that were filed, according to the debtor the summary judgment proceeding made it absolutely clear that there's no impediment to sending out proof of claim forms. Don't know how that happened, don't know what order they got that came to that conclusion, but they're ready to forego your opinion. We're not.

THE COURT: Well, I think -- I guess the question is if a bar date can be set if in fact -- excuse me -- I'm sorry. If in fact the Zonolite, I'll call it locations for a moment, can be identified in some reasonable fashion so that notice can be given, and I understand some of it's going to be by publication, so that a bar date could in fact be set, I don't know that it's not -- that it's a bad idea to set a bar date. I thought what I was being asked to do was to determine whether there is such an unreasonable risk of harm that some sort of class action type of proof of claim could be filed instead, but, you know, of course we've done it both ways. And frankly, to see what the universe of Zonolite claims is that actually exists may not be a bad thing, because it may lead toward a settlement with the property damage.

MR. BAENA: Well, Judge, first, I of course don't think that the special counsel for Zonolite expected this argument today because --

THE COURT: Well, I'm not really --

MR. BAENA: -- they didn't expect --

THE COURT: -- having an argument.

MR. BAENA: -- a supplemental motion.

THE COURT: Yes.

MR. BAENA: So I wouldn't want us to foreclose the opportunity for them to argue --

THE COURT: Certainly not.

MR. BAENA: -- again about the class proof of claim. In terms of, well, maybe we can have, you know, two columns, if we come down to a conclusion that it's harmful and a class proof of claim form would be appropriate, it's okay that we wen through this other effort. I would only point out that the debtor has taken a very odd turn in its papers as to what it would entail to have such an undertaking. The papers that they've filed so far they say, all we have to do is file a notice in the Wall Street Journal and in, I think it was USA Today, of the bar date and we're all set to go. Well, Judge, I hope we don't have to bring their expert in again to show that they're wrong. It's a much more ambitious notice program, as you will know, and the program we used for the last bar date was streamlined because we took Zonolite out of it. That program required television spots and a whole variety of things.

So the only point I would make to discourage you from the two columns is that there's enormous expense attendant to a Zonolite bar date under column A. That program I believe cost

three or four million dollars last time. And to launch that, to get people calling us incessantly about how his applies to them, helping them fill out proof of claim forms, just the overload on resources and the expenditures would seem to me to be improvident unless we've gotten to the point where you've concluded that a class proof of claim can't be used.

THE COURT: Well, I think the issue is whether or not Zonolite presents such an reasonable risk of harm that that kind of specific notice so that a class can be certified goes out. I don't know that they're inconsistent, Mr. Baena, but again, I haven't seen the motion so maybe I'd better wait to address this until I get the motion and the objection period in. I'm not sure that they can't go out on parallel tracks, but the expense may be a reason not to do it. I'm just not totally sure they're exactly one issue.

MR. BAENA: Well, I don't wish to argue it today. I can -- I can conceive of reasons, Judge, the easiest of which is if you start telling people that there's a bar date you'd better advertise well that maybe they don't have to comply with it or else you're going to have the problem that you were trying to avert occur. And it just seems to me --

THE COURT: Well, I'm hoping that as soon as the New Year is done Zonolite gets to the top of my list for examination, so maybe it won't take all that long to get it figured out anyway.

MR. BAENA: Okay. Thank you, Judge.

THE COURT: Mr. Lockwood?

MR. LOCKWOOD: Your Honor, I must say I find this protocol mind boggling, really. The debtors originally filed these motions. They wanted to have the disclosure statement hearing today. Then they said, when Your Honor -- when we said, gee, that's a little quick, they said, well, okay, we'll put it off till January. We all worked like beavers for a month to get ready to file these pleadings tomorrow. Nonchalantly on Friday the debtors show up and say, well, gee, you know, why don't we put off two of the four things that we had on the agenda for 60 days and we'll just deal with one of them first, and then if we have time maybe we'll get to the second.

Well, number one, estimation, we accept the notion that an estimation of the PI claims, I'm not going to speak for Mr. Baena's constituency, but the PI claims is appropriate. We don't think the way the debtor proposes to do it is appropriate but we're prepared to deal with that on January the 21st and we'll file or response to that tomorrow. The suggestion, however, that the case management order is appropriate for January 21st when the disclosure statement hearing is not is just preposterous. I mean, we hadn't -- the draft that we are proposing to file tomorrow on the case management order basically says it's premature because we're -- it's predicated

on the notion that the plan of which it is simply a part will be confirmed.

THE COURT: Yeah, I agree --

MR. LOCKWOOD: And we have disclosure statement objections that we are, unless Your Honor tells us not to, we'll file tomorrow.

THE COURT: Well, i think you ought to file them because it seems to me --

MR. LOCKWOOD: And it will raise the two issues that Your Honor -- in fact, it will only raise the two issues that Your Honor wants briefed, because we took the position that although we agree with Mr. Baena that the plan and the disclosure statement are full of unconfirmable provisions, the basic notion here -- and they don't -- nothing Ms. Baer has said here indicates that they propose to change the voting provisions, all they're doing is fiddling around with their sisters, the Equity and the Unsecured Creditors Committee -- the unsecured I guess are going to get some more interest and, you know, I don't know what the equity are going to get, but I'm sure it'll be good for them, too -- but they're still going forward with a plan that is premised on the notion that they can get both a confirmation under 1129 and a 524(g) injunction with no vote by asbestos PI ans asbestos PD. And that's just poppycock. I mean, the PI claims are impaired, and indeed one of the reasons they're impaired is because of the case

management order. And even if they weren't impaired 1126(f) doesn't apply to 11 -- 524(g). As far as we can figure out, reading between the lines in their plan, they seem to have the idea that if they say they're unimpaired and therefore they're deemed to, in the language of 1126(f), accepted the plan for 1129 purposes, that that's the same thing as voting by 75 percent in favor of the plan --

THE COURT: Well, regardless --

MR. LOCKWOOD: -- different terminology in a different section with different legislative history. Now --

THE COURT: Regardless of that, it seems to me that here's the issue. If the debtor is going to be filing an amended disclosure statement and plan, if you've got the objections to the disclosure statement now ready to go, frankly, I think you ought to file them, because the debtor can then at least see them, have a little bit of time to consider them, maybe be able to resolve some of them. They -- maybe not all of the major ones, but some of the minor things may be able to be resolved.

MR. LOCKWOOD: Well, we don't have any minor things. That was what I was -- you had -- you had suggested earlier that we brief the voting issue?

THE COURT: Yes.

MR. LOCKWOOD: That's what our disclosure statement objections are going to tee up. That's all we've objected to,

because remember, if we can't vote we don't really care what's in the -- I mean, the disclosure statement as it's presently written is aimed at the unsecured creditors and the equity. We don't -- we're sort of out there. I mean, what's the disclosure statement to us? Why do we care? I mean, it's their plan, they, you know, they don't need us. So --

THE COURT: I wonder what the Wall Street Journal, since I got promoted to District Judge but also learned a lesson from Combustion that the unimpaireds should not vote overwhelmingly about something that the impaireds should do would think about the exact opposite situation when nobody gets to vote?

MR. LOCKWOOD: Well, moreover, they're using unimpaired in the non -- in a medical sense, and here we're using unimpaired in the sense Your Honor mentioned earlier, which is entitled to be paid in full in cash on the effective date or passed through, neither of which this plan does. But I guess what I'm saying is I believe that we can kill two birds with one stone, if you will, where by we will at least file our disclosure statement objections which -- address the two issues that Your Honor thought would be appropriately briefed. The debtors can reply, and we can -- we can have that issue argued on the 21st because, I mean --

THE COURT: Well, let me ask, Mr. Lockwood. Ms. Baer, is the amended disclosure statement and plan going to

change this voting issue? Because if not, I might as well get that teed up now.

MS. BAER: No, Your Honor, it does not change it.

THE COURT: All right. Then why don't we just file the objections and at least use the 21st of January productively for that purpose? Mr. Baena?

MS. BAER: Your --

MR. BAENA: -- ask also whether they changed the cap on payments to --

MS. BAER: No, Your Honor.

MR. BAENA: -- asbestos funds?

MS. BAER: No, we have not.

MR. LOCKWOOD: That'd be fine, Your Honor. I think, though, I think that'll make the January 21st hearing considerably more productive, and we will accept the notion that since they're going to file an amended plan and disclosure statement we may well be back at a future date, but at least we can get these overarching issues out and Your Honor can speak to them, and I think that'll be useful guidance for everybody in the process.

THE COURT: All right. With respect to the case management order, I also am concerned about how I can actually meaningfully address it until I know what the plan is that's going to be of record. I don't know what issues will have to be adjudicated post confirmation. I can take a guess at some

of them but --

MR. LOCKWOOD: Well, to some extent, Your Honor, our objection on the impairment point addresses the case management order from the perspective of what it does by way of impairing claims. And my own view of the matter is that when you think about what the case management order is, I mean, normally a case management order is something that Your Honor puts in because it's -- she wants a case management in the case right now that she's going to organize. This case management order would control proceedings in front of the District Court, not this Court, the District Court, post consummation. I mean, for the -- I mean, I can understand why Your Honor might say, oh, that's, hey, but I think the District Court might, for example, have some ideas about whether or not based on estimation it wants to have consolidated issue trial of 100,000 claims directed at this trust, for example, but --

THE COURT: Well, that's why I'm not sure that if there's going to be something post confirmation it shouldn't be part of a plan like a protocol that --

MR. LOCKWOOD: In fact, that's what I believe this case management order effectively is. It is -- it is part of the TDP. If you look at their plan they've got a trust distribution process which is -- which really is broken into two pieces. One is what they call the cash option in which you make an election, interestingly enough, back when you file your

questionnaire for purposes of estimation, but you make an election as to whether you want to settle under the matrix set forth in the TDP or whether you want to litigate. If you want to litigate the case management order kicks in. So there really -- its TPD -- in the normal sense they'd be the same document. The litigation option and the settlement option would be a single thing, it'd be called trust distribution procedures. They've split it them in two, put a label called case management order on the second piece, which, as I say, governs in the District Court litigation post consummation, and now want Your Honor to pass on that in some way or another totally divorced from whether the plan that justifies its creation in the first place will ever get confirmed. And we just think that's preposterously premature at this point, that Your Honor couldn't appropriately consider the issue outside the context of the plan much less outside the context of what the District Court may or may not decide to do with the alternative, because the CMO, as Ms. Baer said, posits two alternatives for you. One is to approve the post-consummation litigation option. The other is to approve their pre-confirmation litigation option, which when last seen was sitting in the District Court awaiting the ruling by Judge Woland and which is now presumptively in front of Judge Buckwalter until he says differently.

THE COURT: Well, with respect to the concept that,

you know, the District Court -- obviously I can't control the District Court's calendar and schedule, but with respect to the fact that a process can be set up, either through a CMO, through a TDP, whatever you want to call it, but a post-consummation -- confirmation process in the District Court, the District Court, to the extent that there's going to be a 524(g) injunction request, it has to sign off on the order anyway. So the District Court, even though all I'd be doing is making recommendations, would still be controlling that end process. I can assure you I'm not going to be signing something by way of a final order that purports to tell a District Court Judge how to try a case, so.

MR. LOCKWOOD: Right, and that CMO piece of the TDP would come before --

THE COURT: Right.

MR. LOCKWOOD: -- the District Court once this Court rules on confirmation of the plan, which is a long way down the road, so why are we talking about the CMO which is in effect effectively a part of that now, that --

THE COURT: All right. So for the 21st think we should go forward with at least these couple of issues on the disclosure statement. I think the objections maybe should be filed simply so that to the extent they raise legal issues and the amended documents are not changing that concept, then at least we can get past those issues. I'm willing to hear the

ZAI motion, then, too, I haven't seen it, if parties can get that teed up. I simply don't know at this point what it says or --

MS. BAER: Your Honor, if I might kind of direct this back, the first thing that we think absolutely has to be taken up, and I don't think anybody on that side disagrees, is estimation. Estimation with respect to PD, estimation with respect to PI and estimation with respect to ZAI, the process, getting the bar dates, approving the claim form, approving the PI questionnaire, that's the first and foremost thing that has to be taken up, no matter what plan we ultimately have in this case.

THE COURT: Okay. That's fine.

MS. BAER: And that's the first thing we're asking get heard on the 21st.

THE COURT: Anybody object to that?

MR. LOCKWOOD: No, Your Honor, but I would point out that --

THE CLERK: Speak into a mike, please.

MR. LOCKWOOD: -- I would point out that with respect to the PI part of the estimation many of the objections to the process are aimed at issues that are also related to the plan, i.e. what sort of elections you have to make. But in principle, in terms of teeing up the issue of estimation, we agree with Ms. Baer that we should start on the process. My

guess is the Court will determine that the issues are sufficiently complex on the 21st that other than sort of moving forward with the idea of an estimation and deciding whether you versus Judge Buckwalter is the appropriate person to do it, it may require some more scheduling discussion but --

THE COURT: Well, I don't expect to do an evidentiary -- I'm not starting --

MR. LOCKWOOD: -- but we should --

THE COURT: -- an evidentiary hearing on estimation, but --

MR. LOCKWOOD: -- but right --

THE COURT: -- to discuss the process --

MR. LOCKWOOD: -- but --

MS. BAER: Your Honor, it's just the process.

THE COURT: Yes.

MS. BAER: You can't. We're asking for a bar date. We're asking for a bar date notice to go out. We're asking for the kind of publication we want to do to get approved. On ZAI it's the same thing, Your Honor. It's just the process. We're asking for a simple bar date, a simple proof of claim form. We will have a publication notice program attached to it. That's what we're asking for you to consider at the hearing.

THE COURT: I'll look at it and see what responses come in, but that one, until I get through the summary judgment process and decide whether class proof of claims are actually

appropriate, I just don't know about. I'm not convinced that they're inconsistent, but --

MS. BAER: Your Honor, we don't think they are at all, and we simply are trying to move the process along as quickly as we can, and by getting that bar date and getting that notice out there at least we can get in people who are in fact interested here. Your ruling will be very key with respect to what happens to those claims, the allowability of the claims, the value of the claims, which again is key to estimation, but there's no reason not to get the process started now --

THE COURT: All right.

MS. BAER: -- and that's what we're going to on that one.

THE COURT: Okay. Folks, we've got to move. I'm way behind. So let's go. Let's get rid of this issue. It's enough. It's for January 21st. Mr. Baena?

MR. BAENA: Is counsel suggesting that this new motion is going to have a notice program in it? We have to vet that notice program by the 21st?

MS. BAER: We will have a notice program in it, Your Honor.

MR. BAENA: Judge, I have a notice expert, too, and we haven't spoken to him since the last time we did notice. You know, Judge, today is the 20th.

THE COURT: Well, that's a month.

MR. BAENA: And we've got holidays in between.

THE COURT: Mr. Baena, that's a month. Lawyers work over the holidays all the time.

MR. BAENA: Well, Judge --

THE COURT: They tell me that. I read their fee applications

MR. BAENA: But how do I know that my notice expert is working all that month? I know I'm not --

THE COURT: Because he wants to get paid, too.

MR. BAENA: -- I'm not -- Judge, that's a very ambitious agenda, and I'm not the spokesperson, as you know, for the folks that are involved in the trial before you, so it's particularly difficult for me to sit here and nod affirmatively about this proposal.

THE COURT: Well, I think what we ought to do is get the motions filed, get the response dates and, Mr. Baena, if people haven't had an adequate time because of the holidays then maybe it's just going to have to be pushed off, but let's at least get it on for a status conference, see what objections can come in or what agreements come in, because the process has to start somewhere, and this is as good a place to start as any.

MR. BAENA: I understand, Judge, and I'm not pushing back on anything other than the Zonolite notice program and --

THE COURT: Well, I --

MR. BAENA: -- proof of claim form and --

THE COURT: -- I'll take that third out of the three of the notice programs that we're going to look at and see where it goes. I don't know, since I haven't seen the motions, what's going to be involved. Frankly, at this point I'm more interested in getting the disclosure statements, these couple of issues under way, because if this plan's not confirmable I want the debtor to know that up front so that it gets modified in time to have a meaningful plan, and the estimation issues will, I think, take some time longer than amending the disclosure statement. So we ought to start on the estimation and getting something teed up, and we ought to get the disclosure statement issues set, I think.

MR. BAENA: Judge --

MS. BAER: -- Your Honor, the concern I have is the estimation vis a vis PI/PD/ZAI itself is going to take up the time and the focus in January. Does it really make sense for everybody to be briefing these issues vis a vis disclosure statement addressing those at the same time?

THE COURT: If they're telling me that they're not going to be prepared because the motions haven't been filed yet to address them in January but they are prepared to address the disclosure statement issues because the disclosure statement has been filed and their objections are ready, I'm going to

hear the disclosure statement issues and we'll push off the estimation issues.

MS. BAER: Then, Your Honor, what I'd ask for is a little guidance. We're expected, unless Your Honor extends the deadline, to get a lot of objections to the disclosure statement that do not go to the core issues. They're the basic disclosure statement objections. And we're getting constant -- bombarded, as you can imagine, by requests from people for additional time, and my response is if Your Honor continues the deadline then I can continue it, otherwise we're in the position of having to respond to all of those by January 4th.

THE COURT: It seems to me they ought to be filed. The objections ought to be filed so that the debtor can see which ones you can resolve in an amended disclosure statement without needing to go forward. If you're going to amend the disclosure statement anyway there may be numerous objections that you will agree you can correct or add to or whatever without litigation, and then you can do it. Your response simply can be that, you know, we'll take care of this in an amended disclosure statement. But with respect to these big issues I really think they ought to be teed up. We should just get them argued in January.

So with respect to the debtor's time to respond to them I am more concerned at this point about getting responses in to the voting issues than I am to anything else. With

respect to smaller things that you think will be corrected in an amended disclosure statement I think it would be satisfactory to say the debtor, you know, hopes to cure this in an amended disclosure statement and let it go at that. And I don't expect to argue every issue. I expect to argue the couple of issues I've raised on the record today on January 21st. I'm not going to get into the nitty gritty substance of the disclosure statement when the debtor's telling me you're going to change it.

MS. BAER: -- Your Honor, it was our intention to file an amended plan and disclosure statement just vis a vis the matters that changed because of the Unsecured Creditors Committee, Equity Committee joining us. None of these other matters will change in the -- in the plan and disclosure statement at all.

THE COURT: Oh, well, then let's just do the objections and get them teed up. I mean, if that's -- if there is not going to be a significant change in the disclosure statement but you've resolved something with the Equity Committee for its distribution and the unsecured creditors, then I think you can do a supplemental that says, you know, we're going to amend it to say that the Equity Committee's going to get, I'll make this up, a hundred shares of stock, you know, and that unsecured creditors are going to get six percent interest, then life will go on. We don't need to worry about

those issues. But if there -- there are some structural issues in this disclosure statement and plan that are unlike other cases that I've seen. I'm sure people want to be heard about them, and I want to hear the arguments about them. So let's just stick to the deadline the way it's crafted, then.

MS. BAER: And, Your Honor, I believe there are also likewise deadlines on the case management order request and on the solicitation order. Again, all the deadlines for responses are tomorrow, and I think our reply is the 6th or the 4th, I can't recall.

THE COURT: Well, if you want them -- if you want them even for a status conference on the 21st we ought to stick to those deadlines, although on the case management order I'm really not sure how I'm going to be able to enter anything on that till I know what the plan and disclosure statement are. So it would seem to me that the order ought to be the disclosure statement issues, then the estimation issues. We could push off the solicitation issues and the case management issues until after there's a ruling on the others, I think, because you need rulings, but I don't think you need them now.

MS. BAER: Well, Your Honor, we've been trying to get a case management order since day one of this case. It's always been possible to get those procedures going again no matter what the plan and disclosure statement say. We come back to the same thing today. Once again we're trying to get

case management order -- case management procedures in place, and once again it's being delayed. It does not have to wait for the disclosure statement and plan to be approved.

THE COURT: But it does because Judge Buckwalter has it. I can assure you --

MS. BAER: He has the old one.

THE COURT: Well --

MS. BAER: He has the old one.

THE COURT: -- but what can I do when he's got one? You know, get it back here. I assure you I'll be happy to hear it. I'd like to get a case management order in place. Whether it's pre or post confirmation, I don't care. I just want to get one so that we can move this case along. So get it back in front of me and I'll run with the ball. But until it's --

MS. BAER: We're trying.

THE COURT: -- here I don't have a ball to run with.

MS. BAER: We're trying, Your Honor.

MR. BAENA: Judge, may I ask for the Court's indulgence? Given that we are -- we're actually -- we're here through tomorrow because of US Gypsum and we're meeting with Judge Conte tomorrow, could we have until Wednesday to file this so that I have an opportunity to go back to my office and fix our presentation in accordance with the discussion today?

THE COURT: How much extra time will the debtor need to respond?

A SPEAKER: The debtor was --

MS. BAER: Your Honor, we --

A SPEAKER: Your Honor --

MS. BAER: -- the schedule --

A SPEAKER: -- the debtor was --

MS. BAER: -- is as it is. It would be unfair for me to say -- frankly, I'd like a lot more time but, I mean, we don't have a great deal of time here in order to get ready for the 21st. If Mr. Baena wants a few more days and we can have a few more days, I mean, that's certainly acceptable.

MR. LOCKWOOD: Your Honor, the PI Committee will file their papers tomorrow, all of them, the case management --

THE COURT: Yes --

MR. LOCKWOOD: -- confirmation --

THE COURT: -- Mr. Baena --

MR. BAENA: We're probably -- we're probably in a position --

MR. LOCKWOOD: -- et cetera.

MR. BAENA: -- to do that as well, Judge, but --

THE COURT: Yes, you can have until Wednesday.

MR. BAENA: -- like to go through them just based on this conversation.

THE COURT: You can have until Wednesday, and --

(Pause)

THE COURT: Mona, what is -- am I in town on the 7th?

(Pause)

THE COURT: Okay. The debtor can have until Friday the 7th, our close of business -- let's say 4:30, eastern time, to file the responses. Now, that pushes your agendas to me back, because I won't get it over that weekend. Mona, I need to get what's going to be filed by the parties by Friday. I have to have it that weekend. So -- can -- only in this one instance, Mr. Baena, when you file your documents would you notify my office directly that it's been filed, and I will print it off the docket. I do not regularly do docket searches because I end up with duplicates and triplicate copies and it drives me nuts, so I don't do that, but in this instance if you will notify me of the docket number then we'll print your pleadings off the docket. And, Ms. Baer, if you will notify me of your response docket number we'll print that off the docket. And I guess, Mr. Lockwood, if you're filing yours tomorrow you'd better do the same thing.

MR. BAENA: Judge, on another occasion I believe that we actually e-mailed to you here in Pittsburgh our documents separate and apart from the filing.

THE COURT: You know, that would actually even be better. I can print it more easily that way. But then the binders, if I get those three sets of documents, which I think will probably be the principal issues, I'm assuming, is anybody else -- well, you probably won't be filing objections at this

point, correct?

MR. PASQUALE: We'll be filing some papers, Your Honor, but we can meet the schedule.

THE CLERK: Your name?

MR. PASQUALE: Ken Pasquale from Stroock, I apologize.

MR. WYRON: Your Honor, Richard Wyron for the futures rep. We'll be filing one consolidated objection. If we could also have until Wednesday we can send that to Your Honor however it best suits Your Honor.

THE COURT: All right. On this instance only and never again, and as soon as you do it you forget my e-mail address, send me a copy via e-mail of what you're filing, those of you who are filing either tomorrow or Wednesday or Friday. And then, Ms. Baer, the binders can come --

A SPEAKER: Judge, we --

THE COURT: The -- we're talking --

A SPEAKER: -- 24th --

THE COURT: -- the 7th of January. Yes, I should state for the record, I'm talking about -- maybe I am not correct.

MS. BAER: No, Your Honor, we are talking about Friday, January 7th --

THE COURT: 7th, okay.

MS. BAER: -- for the -- for the --

THE COURT: Debtor's response, yes.

MS. BAER: -- response papers. Right. But I --

A SPEAKER: Your Honor, very small matter, we have an e-mail address for Your Honor as well as for Ms. Baer. Where do you want it to go?

(Pause)

A SPEAKER: Okay. Thank you.

A SPEAKER: -- not here.

A SPEAKER: Thank you.

A SPEAKER: -- my --

THE COURT: The address is jkf@pawb.uscourts.gov. So it's not mine, it's not Ms. Baker's, it's my Delaware box.

A SPEAKER: Thank you.

THE COURT: All right. So for the record, I'm talking about tomorrow or the next day, Wednesday, or Friday, January 7th, those are the three dates which have now been impacted. Everyone who can file tomorrow, please do. Those of you who can't, you have an extension till Wednesday. The debtor has till January 7th. Now, the binders, Ms. Baer, I still need the binder. Mona, am I in town on the 14th?

(Pause)

THE COURT: Okay. Can I get the binders from you by the 14th of January?

MS. BAER: Yes, Your Honor.

THE COURT: Okay. That's fine. We'll make that work.

All right. So my view is then we'll start with the disclosure statement issues, then we will go to estimation. If we get as far as solicitation and the CMO we will, otherwise those are the two things that will be put off. The likelihood is I think they'll be put off.

MS. BAER: And, your Honor, since we're filing the ZAI bar date request today but want it on the same schedule you'd actually be shortening the time period by three days to get it here on the 21st, which is the 24th? It's timely for the 24th.

THE COURT: It's fine to do it on the 21st. I'm not sure exactly how far we're going to get with those anyway, because the argument's on the disclosure statement, but we'll start down those -- down that path. And if it needs to be continued it'll be continued till the 24th.

MS. BAER: I understand that, Your Honor.

THE COURT: All right.

MR. KRUGER: Your Honor, Lewis Kruger. Just a minor scheduling question. What time are you starting on the 21st?

THE COURT: I have no idea. Nine o'clock?

A SPEAKER: Nine a.m.

THE COURT: Nine o'clock?

THE CLERK: Your name, sir?

MR. KRUGER: Oh, it's Lewis Kruger from Stroock --

THE COURT: Okay.

MS. BAER: Your Honor, I believe that concludes the agenda for today.

MR. WYRON: Your Honor, one -- if I might, Richard Wyron for the futures rep -- I wanted to alert Your Honor to one issue, and it's in answer to Your Honor's question about whether anyone opposes estimation. To the extent Ms. Baer is talking about bar dates and notices, she's talking about present asbestos claimants, and we agree with Mr. Lockwood and the parties will sort that out. To the extent the debtor is trying to use 502(c) to estimate demands instead of claims, then we do oppose that. Our papers tomorrow will address that, and I just wanted for the sake of completeness to answer Your Honor's question, but that is an issue you will see and will hear on the 21st.

THE COURT: All right.

MR. WYRON: Thank you.

MS. BAER: Thank you, Your Honor.

THE COURT: Anyone have any housekeeping matters? All right. We're adjourned. Thank you.

(Hearing adjourned)

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C E R T I F I C A T I O N

I, BEATRICE A. CREAMER, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

_____ January 2, 2005
BEATRICE A. CREAMER Date
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